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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
  
Hearing  
  
December 4, 2000  
Jefferson City, Missouri  
Volume 4

In the Matter of the Application of )  
City of Rolla, Missouri, for an )  
Order Assigning Exclusive Service ) Case No. EA-2000-308  
Territories and for Determination of )  
Fair and Reasonable Compensation )  
Pursuant to Section 386. 800, )  
RSMo 1994. )

KEVIN THOMPSON, Presiding,  
DEPUTY CHIEF REGULATORY LAW JUDGE.

SHEILA LUMPE, Chair,  
CONNIE MURRAY,  
ROBERT G. SCHEMENAUER,  
KELVIN SIMMONS,  
M. DIANNE DRAINER, Vice-Chair,  
COMMISSIONERS.

REPORTED BY:

KELLENE K. FEDDERSEN, CSR, RPR  
ASSOCIATED COURT REPORTERS, INC.

ASSOCIATED COURT REPORTERS, INC.  
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24  
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3 FOR: Staff of the Missouri Public  
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1 P R O C E E D I N G S

2 JUDGE THOMPSON: Good morning. My name is  
3 Kevin Thompson. I'm the Regulatory Law Judge assigned to  
4 preside over this hearing.

5 We are here in the matter of the Application  
6 of the City of Rolla, Missouri, for an Order Assigning  
7 Exclusive Service Territories and for Determination of Fair  
8 and Reasonable Compensation Pursuant to Section 386.800,  
9 Revised Statutes of Missouri 1994, Commission Case  
10 No. EA-2000-308.

11 I will take oral entries of appearance at this  
12 time, beginning with the City of Rolla.

13 MR. DUFFY: Let the record reflect the  
14 appearance of Gary W. Duffy, Brydon, Swearngen & England,  
15 P.C., P.O. Box 456, Jefferson City, Missouri 65102,  
16 appearing for the City of Rolla and Rolla Municipal  
17 Utilities.

18 JUDGE THOMPSON: Thank you, Mr. Duffy.  
19 Intercounty Electric Cooperative.

20 MR. COMLEY: Thank you, Judge. Let the record  
21 reflect the entry of appearance of Mark W. Comley, Newman,  
22 Comley & Ruth, 601 Monroe, Suite 301, Jefferson City,  
23 Missouri 65101, on behalf of Intercounty Electric  
24 Cooperative Association.

25 And also, Judge, I'd like to introduce to the

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1 Commission at this time, on my left, Mr. Bill Gladden,  
2 attorney for Intercounty from Houston, Missouri; and  
3 directly behind him, Mr. Ed Hoertel, an attorney from Rolla,  
4 also appearing on behalf of Intercounty today.

5 JUDGE THOMPSON: Thank you, Mr. Comley.  
6 Southside Neighbors?

7 MR. DUNBAR: Thank you, Judge. Let the record  
8 reflect my name is Michael Dunbar of Smith, Dunbar & Turley,  
9 P.O. Box 494, Waynesville, Missouri, representing Southside  
10 Neighbors.

11 JUDGE THOMPSON: Thank you, sir. Office of  
12 the Public Counsel?

13 MS. O'NEILL: Good morning, Judge. Ruth  
14 O'Neill, Office of the Public Counsel, P.O. Box 7800,  
15 Jefferson City, Missouri 65102.

16 JUDGE THOMPSON: Thank you, ma'am. The Staff  
17 of the Public Service Commission?

18 MR. FREY: Thank you, Judge. Dennis L. Frey,  
19 P.O. Box 360, Jefferson City, Missouri, representing the  
20 Staff of the Missouri Public Service Commission.

21 JUDGE THOMPSON: I think we've covered all the  
22 parties. Are there any other parties whose representatives  
23 I have not called on?

24 Okay. If you would like an ASCII disk of the  
25 transcript, you can have that, but you need to make your

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1 request today.

2 All right. We have some preliminary matters.  
3 First of all we need to mark our exhibits, and secondly, we  
4 have a couple of pending motions. Let's go ahead and mark  
5 the exhibits first.

6 I have prepared surrebuttal testimony of  
7 Andrew A. Marmouget. Is that pronounced correctly?

8 MR. DUFFY: Marmouget.

9 JUDGE THOMPSON: Marmouget. Thank you, sir.

10 MR. DUFFY: Is that the only one you want  
11 marked at this time, your Honor?

12 JUDGE THOMPSON: Well, I'm going to go through  
13 them all. So I'm going to mark that as Exhibit 1. I have  
14 prepared direct testimony of Dave Stogsdill. Mark that as  
15 Exhibit 2.

16 MR. DUFFY: Your Honor, we're not going to  
17 call Mr. Stogsdill. We, I think, faxed around a notice to  
18 everybody the other day that said we were not going to do  
19 that. So there's no need to mark Mr. Stogsdill's testimony.

20 JUDGE THOMPSON: Well, I would prefer to go  
21 ahead and mark them anyway. If you're not going to use  
22 them, that's fine.

23 MR. DUFFY: I'm not going to introduce them  
24 and I'm not going to offer them. So why should we mark them  
25 if we're not going to offer them?

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1 JUDGE THOMPSON: It helps me keep my file  
2 organized, Mr. Duffy.

3 MR. DUFFY: Do I need to -- if you're going to  
4 mark it, does that mean I have to give three copies to the  
5 court reporter?

6 JUDGE THOMPSON: You do not unless you should  
7 use them, sir.

8 I have prepared direct testimony Rodney  
9 Bourne, HC and NP. I have prepared surrebuttal of  
10 Mr. Bourne.

11 I have prepared direct of Dan Watkins. That  
12 will be Exhibit 5. I have prepared rebuttal of Mr. Watkins.  
13 That will be Exhibit 6. I have prepared surrebuttal of  
14 Mr. Watkins, Exhibit No. 7.

15 I have rebuttal of Mr. Krewson. That will be  
16 Exhibit No. 8. I have rebuttal of Mr. Ledbetter, Exhibit  
17 No. 9. I have rebuttal of Mr. Nelson. That will be  
18 Exhibit No. 10. Rebuttal of Mr. Strickland will be Exhibit  
19 No. 11. We have quite a few exhibits with Mr. Strickland.  
20 I don't see an Exhibit 10 -- excuse me -- Schedule 10. Is  
21 there one?

22 MR. COMLEY: On his exhibits?

23 JUDGE THOMPSON: On Mr. Strickland, that is  
24 correct.

25 MR. COMLEY: I presume there was, but we'll

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1 have to take a look, Judge.

2 JUDGE THOMPSON: I find it here, territorial  
3 agreement letters. Okay. I apologize.

4 I have rebuttal of Mr. Priest. That will be  
5 Exhibit 12. And then I have rebuttal of Mr. Ketter. That  
6 will be Exhibit 13. And cross-surrebuttal of Mr. Ketter,  
7 Exhibit 14.

8 Anybody have any exhibits that I have not  
9 mentioned?

10 MR. COMLEY: Your Honor, in connection with  
11 Mr. Strickland's supplemental rebuttal which was the subject  
12 of Intercounty's recent Motion to Supplement --

13 JUDGE THOMPSON: Yes, sir.

14 MR. COMLEY: -- Intercounty intends to file  
15 that as an offer of proof. Do you prefer to record that as  
16 an exhibit now or wait until the offer of proof?

17 JUDGE THOMPSON: We'll go ahead and mark it  
18 now as Exhibit No. 15.

19 Okay. I think that covers all the exhibits;  
20 is that correct?

21 MR. DUNBAR: Judge, on behalf of Southside  
22 Neighbors, Mr. Priest had three exhibits attached to his  
23 rebuttal testimony. I did not hear you mention that, but  
24 they were marked as Exhibits A, B and C to his --

25 JUDGE THOMPSON: You refer to those generally



1 as schedules, since the testimony itself is referred to as  
2 an exhibit and they're usually considered part of it. I  
3 have them attached here.

4 MR. DUNBAR: Thank you, Judge.

5 JUDGE THOMPSON: We can mark them separately  
6 if you want to for some reason, but generally they're part  
7 of the exhibit they're attached to.

8 MR. DUNBAR: I'm just making sure they were  
9 there. Thank you.

10 MS. O'NEILL: Judge, there's one other matter,  
11 and that is that I filed last week two motions to permit  
12 prefilings of exhibits that are related which consist of  
13 letters.

14 JUDGE THOMPSON: We were just about to take  
15 those up.

16 MS. O'NEILL: And I have a third motion for  
17 you as well.

18 JUDGE THOMPSON: Okay. Very well. More  
19 letters?

20 MS. O'NEILL: More letters.

21 JUDGE THOMPSON: All right.

22 MS. O'NEILL: More of the same. I have  
23 provided a copy of the motion, this new motion and this new  
24 exhibit to the parties.

25 JUDGE THOMPSON: Thank you. I would prefer

1 that we go ahead and mark these as exhibits. Okay. So the  
2 motion to allow prefilng that was filed on November 29th  
3 will be marked as Exhibit 16. The motion, supplemental  
4 motion that was filed on December 1st will be marked as  
5 Exhibit 17, and the supplemental motion that we were just  
6 handed shall be marked as Exhibit 18.

7                   Why don't you go ahead and move their  
8 admission and anyone who wants to object can jump in?

9                   MR. DUFFY: Can we just take a second to make  
10 sure that we've got them all straightened out?

11                  JUDGE THOMPSON: Sure.

12                  MR. DUFFY: Let me see if I understand. I  
13 think you said you were marking a motion as an exhibit.  
14 Shouldn't we just mark the exhibit as an exhibit and not the  
15 motion itself?

16                  JUDGE THOMPSON: You're absolutely right.

17                  MR. DUFFY: So my records are correct, the one  
18 that we're marking as 16 on the first page of the exhibit,  
19 it starts out No. 1 with Ira and Eva Lee Letterman; is that  
20 correct?

21                  JUDGE THOMPSON: That is correct.

22                  MR. DUFFY: And is 17 the one that starts Mark  
23 Doyle or Gustav Msuler?

24                  MS. O'NEILL: 17 should be the one that begins  
25 Gustav Msuler.

1 JUDGE THOMPSON: That is correct.  
2 MS. O'NEILL: And --  
3 MR. DUFFY: 18 is Mark Doyle  
4 MS. O'NEILL: 18 is the one that begins Mark  
5 Doyle.  
6 MR. DUFFY: Okay. Thank you.  
7 JUDGE THOMPSON: Thank you, sir. Ms. O'Neill,  
8 proceed.  
9 MS. O'NEILL: Yes, your Honor. At this time I  
10 would move for admission of Exhibits 16, 17 and 18 into  
11 evidence.  
12 JUDGE THOMPSON: Do I hear any objections to  
13 the receipt of Exhibits 16, 17 or 18?  
14 (No response.)  
15 Hearing no objections, Exhibits 16, 17 and 18  
16 are received and made a part of the record of this  
17 proceeding.  
18 (EXHIBIT NOS. 16, 17 AND 18 WERE RECEIVED INTO  
19 EVIDENCE.)  
20 JUDGE THOMPSON: At this time we're ready for  
21 opening statements. You have something?  
22 MR. FREY: Your Honor, yes, if I might. I  
23 have a housekeeping matter that I'd like to put on the  
24 record if I could.  
25 JUDGE THOMPSON: Yes, sir.

1                   MR. FREY: Recognizing that Staff's Statement  
2 of Positions on the issues is not evidence, we filed on  
3 November 21st the statement, and there are a couple of  
4 entries there that I would like to modify. I don't know --  
5 they're essentially for purposes of clarification.

6                   I have notified the parties last Wednesday  
7 afternoon to this effect, and I would just like to read  
8 these two clarifications into the record, if I might.

9                   JUDGE THOMPSON: That's fine with me. Are  
10 there any objections?

11                  MR. DUFFY: I'm going to need to do the same  
12 thing to revise the City's Position Statement, your Honor.

13                  JUDGE THOMPSON: Very well. Proceed,  
14 Mr. Frey.

15                  MR. FREY: Thank you. This'll just perhaps  
16 help you to follow along and understand what I'm --

17                  JUDGE THOMPSON: Thank you. Do you have more  
18 copies?

19                  MR. FREY: Yes, I do. Would you like some,  
20 Judge? Oh, I'm sorry.

21                  JUDGE THOMPSON: I'm sure Commissioner Simmons  
22 would like one. Put one for each of the Commissioners who's  
23 not yet here if you would. Thank you, sir.

24                  MR. FREY: Thank you.

25                  The two clarifications or corrections is first

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1 under Roman Numeral III there, Issue III. If the Commission  
2 determines that the annexed area in whole or in part should  
3 be assigned to the City of Rolla as its exclusive service or  
4 exclusive territory, what is the amount of fair and  
5 reasonable compensation to be paid to Intercounty for its  
6 facilities?

7                   Staff put a number down there that's much  
8 smaller than was used by the main parties in this case,  
9 Intercounty and Rolla, primarily because we interpreted the  
10 question a little bit differently. We just put the net cost  
11 of the facilities; that is, our value for reproduction costs  
12 new less accumulated depreciation.

13                   So we had a much smaller number there, and we  
14 would like to change that number to our total number to make  
15 it consistent with that which was entered by the -- by  
16 Intercounty and by RMU, Rolla Municipal Utility. And so  
17 instead of \$269,616, we would like to instead include all of  
18 the total of our fair and reasonable compensation, which  
19 would be a figure of 1,836,762 plus the reasonable costs of  
20 activities in Section 3(F)(2).

21                   And I'm sorry, I did not make a copy of  
22 Section 3(F)(2), but these are other costs that we have not  
23 quantified. Staff has not quantified them; instead has  
24 recommended that there be some competitive bids let in these  
25 areas.

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1                   So we would like to replace the 269,616 with  
2 1,836,762 plus the reasonable costs associated with  
3 activities listed in Section 3(F)(2).

4                   JUDGE THOMPSON: Thank you, Mr. Frey.

5                   MR. FREY: There's one other, Judge, and  
6 that's Staff's position with regard to issue Roman  
7 Numeral IV, letter E, and that's on the second page of the  
8 handout I gave you. Should Intercounty's additional  
9 wholesale power costs be considered in the calculation of  
10 fair and reasonable compensation?

11                   We initially said yes. It should have said,  
12 Yes, provided that such costs are properly quantified. So  
13 that would be Staff's position on that issue.

14                   That's all I have, Judge.

15                   JUDGE THOMPSON: Thank you, Mr. Frey.  
16 Mr. Duffy?

17                   MR. DUFFY: Your Honor, I'd like to just amend  
18 by interlineation our Position Statement previously filed.  
19 There are just a couple of number changes that take place as  
20 a result of us discovering a slight error in picking up a  
21 number.

22                   As Mr. Frey indicated, his amount for fair and  
23 reasonable compensation under Roman Numeral III changed.  
24 Ours changes slightly. Ours appears on page 4 of our  
25 document under Roman Numeral III. Our position, instead of

1 1,299,473, becomes 1,285,210.83.

2 JUDGE THOMPSON: Okay.

3 MR. DUFFY: In addition, on page 5, at the  
4 bottom of page 5 under F where we're talking about costs of  
5 detaching the facilities, we say the total amount -- we said  
6 the total amount was 465,867 on the first line of our  
7 position. We're changing that to 451,605. 451,605.

8 And then on the last line on page 5, the  
9 number that was 58,790 becomes 44,527.50. And then over on  
10 page 8 under Item G, we're talking about costs to maintain  
11 service to stranded customers. It was a 58,790 number.  
12 It's now 44,527.50. And that same numerical change takes  
13 place under I on that page in the second line where the  
14 58,790 becomes 44,527.50.

15 And those are the only changes we have, your  
16 Honor.

17 JUDGE THOMPSON: Okay. I got your change for  
18 3(F). Now, your next change, if you could give me that one  
19 again.

20 MR. DUFFY: Sure.

21 JUDGE THOMPSON: I think you said at the  
22 bottom of page 5.

23 MR. DUFFY: There were two changes at the  
24 bottom of page 5. There are three lines there saying RMU's  
25 position. The first line there is the number 465,867. That

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1 becomes 451,605.

2 JUDGE THOMPSON: 451? Excuse me.

3 MR. DUFFY: 605. And then the last line, the  
4 number 58,790 becomes 44,57.50.

5 JUDGE THOMPSON: Thank you. Anything else  
6 before we do opening statements?

7 MR. COMLEY: Not to be outdone, the -- Mr. Jim  
8 Ledbetter, one of the Intercounty witnesses, recently  
9 amended part of his schedules concerning the cost to handle  
10 stranded customers. On the City -- or on Intercounty's list  
11 of issues, that figure would appear on page 4. It's  
12 identified as maintaining service to stranded customers.

13 JUDGE THOMPSON: Can you give me the Roman  
14 numeral and number of the issue?

15 MR. COMLEY: It would be under Roman Numeral  
16 III, subparagraph capital letter F.

17 JUDGE THOMPSON: Okay. Service to stranded  
18 customers?

19 MR. COMLEY: That figure now is \$146,000.

20 JUDGE THOMPSON: Instead of 150?

21 MR. COMLEY: Yes, sir.

22 JUDGE THOMPSON: Okay.

23 MR. COMLEY: I've been unable to prepare  
24 amended pages for our Statement of Position. During the  
25 course of the hearing, I plan to hand those out. During the



1 course of the hearing, I plan to hand those out. During the  
2 course of the testimony of the witnesses sponsoring these  
3 figures we will make those amendments. Because of that  
4 change at that level, there will be other changes to the  
5 Statement of Position to balance out that figure.

6 JUDGE THOMPSON: I understand.

7 MR. COMLEY: So I wanted to bring that to the  
8 Commission's attention as well.

9 JUDGE THOMPSON: Thank you, sir. Anything  
10 else?

11 We will go ahead and recess for approximately  
12 five minutes, and I will bring the other Commissioners down  
13 and we will begin with opening statements at that time.

14 (A BREAK WAS TAKEN.)

15 (EXHIBIT NOS. 1 AND 3 THROUGH 18 WERE MARKED  
16 FOR IDENTIFICATION BY THE REPORTER.)

17 JUDGE THOMPSON: I don't think the parties  
18 have agreed on an order of opening statements. So unless  
19 you object, I would propose we hear from City of Rolla, then  
20 from Intercounty, then from the Southside Neighbors, then  
21 from the Office of the Public Counsel and then from Staff.  
22 Is that acceptable? Very well, then. Proceed, Mr. Duffy.

23 MR. DUFFY: Thank you. I'm going to assume  
24 you can hear me if I stand.

25 JUDGE THOMPSON: I can't.

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1                   MR. DUFFY: You cannot? I'd best sit down, I  
2 guess, so I can get to the microphone.

3                   Good morning. I'm Gary Duffy. I'm  
4 representing the City of Rolla and Rolla Municipal  
5 Utilities. We are here in this case to decide if the  
6 Commission will authorize the transfer of certain electric  
7 distribution facilities now owned by Intercounty Electric  
8 Cooperative Association to the City of Rolla and its Rolla  
9 Municipal Utilities and, if so, the price to be paid for the  
10 transfer of those facilities.

11                  All of this is pursuant to a special statute  
12 governing the situation Section 386.800, Revised Statutes of  
13 Missouri. This is the first case the Commission has ever  
14 had to decide under that statute, so we will necessarily be  
15 exploring some new issues.

16                  Let me give you a brief background of what  
17 brings us to this point. The voters in Rolla and the  
18 affected area approved the annexation of approximately 1,350  
19 acres to Rolla in 1998. The annexation became effective on  
20 June 8th, 1998.

21                  That triggered some requirements under  
22 Section 386.800, all of which were met and set out in RMU's  
23 application it filed in this case. Basically and in brief,  
24 Rolla and Intercounty met off and on for a year, during  
25 which they attempted to negotiate a territorial agreement

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1 between themselves that would affect this particular annexed  
2 area and perhaps other areas.

3               No agreement was reached after those  
4 negotiations concluded. The statute says that if no  
5 territorial agreement is reached as a result of those  
6 negotiations, a municipal utility such as Rolla may come to  
7 the Commission and ask it to establish an exclusive service  
8 territory for the municipal utility, to order the transfer  
9 of the existing utility's facilities and to establish a  
10 price for them.

11              The statute applies in annexations by  
12 municipal utilities and, therefore, it can affect both rural  
13 electric cooperatives and investor-owned utilities that are  
14 in these annexed areas.

15              Why is this? Well, in 1991 the General  
16 Assembly passed this statute, and we believe it obviously  
17 had a purpose in enacting the law, and that purpose was to  
18 allow a municipal utility take over facilities of another  
19 utility in an annexed area so that the city's municipal  
20 system could expand coincident with the annexed area.

21              In this situation, we're dealing with the  
22 facilities of a rural electric cooperative. The law in this  
23 state says that rural electric cooperatives are not allowed  
24 to serve in rural areas. Generally, they are -- generally,  
25 they're not allowed to serve in nonrural areas.

1                   When an annexation occurs such as this and the  
2 population of the city is greater than 1,500, the area  
3 ceases to be rural under the law. In this situation, and in  
4 any similar situation, the result is that the rural electric  
5 cooperative's facilities are essentially frozen in place.  
6 They can continue to serve their existing customers, but the  
7 law does not allow them to serve any new structures that are  
8 built in this nonrural area.

9                   New structures can only be served by either a  
10 franchised utility or the municipal utility. In this  
11 situation, it's the municipal utility, Rolla Municipal  
12 Utilities.

13                  Therefore, our position is, unless you  
14 authorize the transfer of RMU, the transfer that Rolla  
15 Municipal Utilities, RMU, is seeking in this application,  
16 RMU will build new electric lines into the area to serve new  
17 structures.

18                  Well, let me rephrase that. We will be  
19 building new facilities into the area to serve new  
20 structures whether the Commission grants this application or  
21 not because we have to. If somebody builds a new house or a  
22 new business in the annexed area, the City of Rolla is the  
23 only lawful supplier to that new structure.

24                  Now, if you do not authorize the transfer  
25 here, this could lead to overhead electric lines being in

1 the backyards of subdivisions where Intercounty has its  
2 facilities now, and it could lead to overhead lines in the  
3 front yards of those same subdivisions where RMU would have  
4 to build a line to serve a new house that's built on a lot  
5 in the subdivision that has no house presently. It can also  
6 lead to crossings of the two electric systems.

7           I think Mr. Ketter referred to this  
8 appropriately in his prepared testimony as dual systems. So  
9 again, unless you grant the application, we're going to have  
10 a dual system in this 1,350 acres. The profusion of  
11 duplicate or dual lines does not take place if you grant  
12 Rolla's application.

13           The statute allows you to order Intercounty to  
14 transfer its facilities to Rolla and set the price. The  
15 statute includes several provisions on how the price should  
16 be determined.

17           When Rolla filed its direct testimony in this  
18 case on June 1, which was the opening round of testimony, it  
19 proposed a solution in which Rolla and Intercounty would  
20 share some existing subtransmission lines in the annexed  
21 area. Rolla thought at that point that that made economic  
22 and engineering sense.

23           Intercounty objected to that approach when it  
24 filed its rebuttal testimony in mid July. It objected to  
25 the sharing proposal that Rolla had made and discussed an

1 approach whereby it would reroute its lines around the  
2 outside of this annexed area on the south side of Rolla and  
3 basically cut off its lines within the annexed area.

4               RMU evaluated this position of Intercounty and  
5 rethought its initial approach, and when Rolla filed its  
6 surrebuttal testimony, it essentially changed its position  
7 and adopted this type of an approach as suggested by  
8 Intercounty.

9               Basically, under the surrebuttal testimony  
10 that we filed, the City's position is that it will take over  
11 all of the existing Intercounty distribution lines and  
12 associated facilities within the annexed area. Intercounty  
13 will build new lines outside of the city to reintegrate its  
14 facilities, reconfigure its system so that it can continue  
15 to serve its existing customers.

16              So if you have spent time looking at the  
17 direct testimony filed by Rolla, you now need to discount  
18 that because we changed our approach, and the approach we're  
19 taking is reflected in the surrebuttal testimony.

20              And Mr. Bourne especially attached a revised  
21 feasibility study in which he did some detailed engineering  
22 analysis of where these different lines had to be cut and  
23 came up with prices for these proposals.

24              That brings us to the issues. The parties  
25 filed detailed Position Statements which set out the issues

1 and their positions on them. I will not take your time to  
2 go through and repeat all of those here because I think that  
3 it fairly sets out what the various positions are and the  
4 amounts associated with them.

5               As I said, this is the first of these type of  
6 cases to reach this stage at the Commission. We have no  
7 prior decisions to provide you any guidance.

8               The evidence will show that Rolla's  
9 application makes sense because it will prevent the  
10 duplication of electric systems in this Southside annexation  
11 area and prevent the creation of a dual system because Rolla  
12 would, if you grant the application, simply take over  
13 Intercounty's facilities and supply electricity from Rolla  
14 to those facilities. Intercounty will reconfigure its  
15 system and go on about its business.

16              The prices that Rolla is advocating for the  
17 various components make engineering and economic sense to  
18 us. The customers affected by the transfer would not be  
19 disadvantaged, in our opinion, in the long run. There would  
20 be temporary outage, of course, to effectuate the physical  
21 transfer of the facilities, but other than that, they should  
22 not be affected.

23              The evidence will show that Rolla's rates are  
24 significantly cheaper than Intercounty's. The published  
25 rates of Rolla I believe are something like 25 percent

1 cheaper than Intercounty's rates. Rolla's rates, according  
2 to the evidence to be presented, have been steady in the  
3 past, and the evidence indicates that there's nothing on the  
4 immediate horizon to indicate that they're going to  
5 increase.

6                   The evidence will show Rolla provides good  
7 quality electric service. So we believe that it is in the  
8 public -- it is in the public interest for you to grant  
9 Rolla's application, and we ask that you approve the  
10 application and accept our proposal regarding the pricing.

11                   Thank you.

12                   JUDGE THOMPSON: Thank you, Mr. Duffy.  
13 Mr. Comley.

14                   MR. COMLEY: May it please the Commission. I  
15 go to old habits. I stand up. Forgive me. If it's going  
16 to be a problem, I will sit down again.

17                   Again, my name is Mark Comley, and I represent  
18 Intercounty Electric Cooperative Association in this matter.  
19 As you will note no doubt from the brief you've been given,  
20 Intercounty was added as a party in this case after the City  
21 of Rolla filed its application.

22                   Intercounty is the current electric supplier  
23 in the area which the City recently annexed. I think  
24 Mr. Duffy has preceded me by calling this the annexation  
25 area or the area, and with respect to that it does include

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1 some 1,300 acres. It's called the Southside annexation.  
2 And it if we call it just the area, I hope that that will  
3 not confuse the Commission. I think that is what we've used  
4 throughout the testimony and today, and I hope that will be  
5 satisfactory, a satisfactory abbreviation for you.

6           If you have reviewed the testimony prepared to  
7 date, you will notice that the witnesses did not necessarily  
8 restrict their testimony to just the facts in this case.  
9 You will notice, if you haven't done so already, that on  
10 both sides a witness or two has engaged in describing the  
11 laws which the Commission will be applying for the  
12 disposition of this case. There's a lot of legal discussion  
13 in the direct testimony and following.

14           What kind of action is this really? Well, as  
15 Mr. Duffy mentioned, this is an action which is the first of  
16 its kind to be decided before this Commission, and the  
17 authority for hearing it is established by a statute in your  
18 own enabling act, Chapter 386.

19           But what is the core of the case? What is  
20 actually the gist of the action some people would inquire?  
21 And I think that's an entirely different matter.

22           Two of the parties before you, Intercounty and  
23 Rolla, are entities that each can exercise the power of  
24 eminent domain. As a general proposition under that law,  
25 neither of these parties can condemn the property of the

1 other except upon consent.

2                   For this case, the Legislature has carved out  
3 an exception to this rule and created a procedure by which  
4 the municipal utility, the municipality rather, acting  
5 through its utility can take the property of another  
6 electric supplier, here an electric cooperative. It has to  
7 be done after hearing, very much like a condemnation case.

8                   And like condemnation, the municipality must  
9 pay a fair and reasonable compensation for the taking. Fair  
10 and reasonable compensation is a specific term. It's  
11 defined in the statute, as you will note.

12                   But unlike condemnation -- this is where  
13 things separate -- the Commission has the additional duty of  
14 finding that the taking is in the public interest. In  
15 total, is the application and the transfer and exclusive  
16 territory requested, is that in total in the public  
17 interest?

18                   Intercounty submits that the evidence will  
19 show the following in the case: On June 8th, 1998, the  
20 Southside annexation became effective and the area  
21 officially became part of the City of Rolla municipal  
22 boundary.

23                   Missouri law requires that prior to annexation  
24 a report be prepared and presented at a public hearing  
25 setting forth the provision of major services presently

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1 provided by the City, a proposed time schedule for these  
2 services and several other pieces of information.

3           To comply with this law, the City of Rolla  
4 filed what's called a Plan of Intent, and it was revised  
5 several times through the annexation process. The City's  
6 Revised Plan of Intent dated October 6th, 1997 is attached  
7 to the exhibit of one of Intercounty's witnesses to this  
8 case, Mr. Vernon Strickland, who is the general manager of  
9 the cooperative.

10           At page 10 of the Revised Plan of Intent you  
11 will find this statement: The areas within the proposed  
12 annexation that are now receiving electric service from a  
13 rural electric coop would continue to do so. Rolla  
14 Municipal Utilities, RMU, would not be allowed to serve any  
15 of these properties. Any new development within this area  
16 would receive electric service from RMU.

17           Less than 40 days after the area was annexed  
18 the City of Rolla published a notice in the local newspaper  
19 that it desired to extend its service territory into the  
20 area and take over service to the Intercounty members in  
21 that area.

22           In about that same time, Intercounty was  
23 notified by Rolla that they were going to do that. What  
24 ensued thereafter was a series of meetings between  
25 Intercounty and the City, and at those meetings the parties

1 explored whether there was any room to settle the issues  
2 that were separating them. There was no successful  
3 resolution, and on October 29th the application before you  
4 was filed.

5                   Let me give you a description of Intercounty.  
6 It was formed under Chapter 394. It was organized in 1936.  
7 It distributes electric energy and service to its members in  
8 all parts of Crawford, Dent, Gasconade, Miller, Maries,  
9 Phelps, Pulaski, Shannon and Texas Counties in Missouri.

10                   It presently serves 28,000 accounts over  
11 approximately 5,300 miles of line and covers approximately  
12 2,500 square miles. It has offices in Licking, Missouri.  
13 It also has offices in Mountain Grove and Rolla with service  
14 warehouses in Houston, Salem, Roby, Summerville and  
15 St. James.

16                   Intercounty is controlled by its members  
17 through an elected board of directors. Intercounty's  
18 mortgage holders are the rural utility services of the  
19 Department of Agriculture and the National Rural Cooperative  
20 Finance Corporation. Members of the cooperative also have  
21 an equity interest.

22                   Intercounty is a 70 percent borrower from  
23 Rural Utility Services and a 30 percent borrower from the  
24 CFC or Cooperative Finance Corporation. The members  
25 themselves own approximately 41 percent of the cooperative

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1 with RUS, Rural Utility Services, and CFC owning the  
2 remainder.

3               With respect to the annexed area specifically,  
4 Intercounty presently serves 286 members, the bulk of whom  
5 take service under a residential rate. As far as its  
6 facilities for this area, Intercounty uses four three-phase  
7 feeder circuits which originate from three Show-Me Electric  
8 substations. Along with the three-phase circuitry, there  
9 are single-phase taps recircuits extended to the area.

10              In addition to the three-phase feeder  
11 circuits, all three substations have other feeder circuits  
12 which feed Intercounty territory in and around Rolla. The  
13 Intercounty designations for these facilities are the East  
14 Rolla, South Rolla and Dry Fork substations. Jim Ledbetter  
15 in his testimony and Mr. Nelson in his testimony will  
16 discuss these.

17              With regard to substation capacity, you will  
18 find that the Intercounty system and in particular the  
19 substations which serve the area currently have significant  
20 capacity for growth and have been constructed and located to  
21 provide adequate capacity to serve the current as well as  
22 future needs of the area.

23              There is a public interest analysis in this  
24 case, as I mentioned at the beginning of my remarks, and on  
25 your statement of the issues that was proposed through the

1 Staff you will see that the parties placed at the top of the  
2 order the issue of whether the assignment of exclusive  
3 territory and the transfer of Intercounty's customers was in  
4 the public interest.

5               With respect to this issue, Intercounty will  
6 submit evidence regarding facilities it has in place, the  
7 ones I've just talked to you about, and the reliability of  
8 those facilities.

9               Intercounty was in this area first. It has in  
10 place the transmission and distribution facilities to  
11 provide the highest level of service necessary to meet not  
12 only the present needs of its members but also their future  
13 needs.

14              On the other hand, the evidence will show that  
15 RMU will be required to install additional facilities such  
16 as substations to expand the existing capacity of its system  
17 in order to serve the load in the area with the comparable  
18 level of service which Intercounty currently provides.

19              The matter of rates for service is a public  
20 interest concern. The issue of the stability of RMU's rates  
21 in the future has been contested, as the Commission knows.  
22 The Commission recently overruled Intercounty's motion to  
23 compel the production of certain agreements and related  
24 documents which Intercounty contends are essential for a  
25 full understanding of what the future may bring for its

1 members of the application in this case is granted.

2           This morning I did file an Application for  
3 Rehearing of your order. Intercounty believes that, as you  
4 see the evidence unfold, the significance of wholesale power  
5 agreements that are new to Rolla and any wheeling  
6 arrangements they have entered as a result of that new  
7 agreement, the significance of those will become plainer to  
8 you.

9           I think the relevance of the future rates to  
10 be paid by Intercounty members, some of whom are interveners  
11 in this case, and who raise this issue, that cannot be  
12 overemphasized.

13           If the facilities are transferred and the  
14 members do become RMU customers, the impact on Intercounty  
15 is measurable. During the past three years the membership  
16 of the cooperative has increased on an average of 732  
17 members per year. The transfer of the 286 customers in the  
18 area translates to approximately 39 percent of Intercounty's  
19 recent growth. Under normal circumstances that amount of  
20 load loss would not be insignificant.

21           We are also dealing with an area where the  
22 infrastructure necessary to serve these members is already  
23 developed. The state of development and load density of the  
24 annexed area makes its loss to -- this area's loss to Rolla  
25 more significant to Intercounty and its members.

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1                   If the area is assigned exclusively to RMU and  
2 the Intercounty members and facilities are transferred, the  
3 existing Intercounty and Show-Me Electric substations and  
4 feeders currently serving the area will be significantly  
5 underutilized for the function for which they were  
6 originally designed and constructed. They represent a  
7 significant investment to the cooperative.

8                   Although it is hoped development around the  
9 new city limits will grow to a point of replacing that load,  
10 that development undoubtedly take many years.

11                  During that time the current transmission and  
12 distribution facilities will remain underutilized and,  
13 therefore, result in higher operating costs for the  
14 remainder of Intercounty's members. These facilities would  
15 be underutilized while RMU would be constructing facilities  
16 to take their place.

17                  Not to be disregarded in your public interest  
18 analysis are the objections that are posed by the  
19 Intercounty members who are residents of the annexed area.  
20 The Commission was witness to, I think, 16 separate members  
21 of the public, the transcript will bear out that number,  
22 whatever it is, 16 members or so who voiced their objections  
23 to the prospect that RMU would be their service provider.  
24 All but one of those residents were -- all but one of those  
25 were residents or had businesses in the area.

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1                   There was not a single person who came forward  
2 to support the application. I think the Chair of the  
3 Commission will recall the number of hands that were raised  
4 when asked -- when she asked how many were served by  
5 Intercounty. I venture that the number of hands that were  
6 in that number were also folks who would oppose the  
7 application in this case.

8                   Public Counsel has just recently admitted  
9 several exhibits before you involving correspondence from  
10 folks in this area. I think over a hundred people have  
11 voiced an objection.

12                  Intercounty believes there's sufficient  
13 evidence for you to conclude that the assignment of the area  
14 as RMU's exclusive territory and the transfer of facilities  
15 is not in the public interest. But if the Commission does  
16 decide that it is, that the territory or parts of it should  
17 be assigned to the City of Rolla, the next issue is the  
18 amount of fair and reasonable compensation to be paid.

19                  The testimony of the witnesses we have  
20 prepared will support a breakdown of those costs that I put  
21 on this handy dandy little poster here. I thought I'd have  
22 this for illustration.

23                  Intercounty believes that its facilities at  
24 their current replacement costs times the depreciation  
25 factor which Mr. Ledbetter will explain in his testimony

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1 comes up to \$749,959.89. Mr. Ledbetter has also prepared an  
2 exhibit noting that the cost to locate main lines to  
3 maintain feed-through capacity and replace investment in  
4 future capacity at \$593,120.

5                   Intercounty's gross revenue for the applicable  
6 12-month period in the statute times four comes out to  
7 \$1.5 million. I'll go ahead and recite that.

8                   The No. 4 item is Intercounty's cost to  
9 maintain service to existing customers or the stranded  
10 customers that I mentioned to Judge Thompson earlier. This  
11 is a correction from our earlier Statement of Position.  
12 This is a reduction of about \$4,000.

13                   Intercounty has already added its Bishop  
14 Avenue office. The testimony in the case will indicate that  
15 because of the way the Plan of Intent was structured,  
16 Intercounty went ahead and constructed an office building in  
17 the annexed area, which is now annexed, and believes that  
18 this facility which is serving the area should be included  
19 in the fair and reasonable compensation figure if the  
20 Commission agrees with RMU's position.

21                   Transfer of facilities, including meter  
22 reading, final bills and crew time, we've assessed that at  
23 \$24,000. The reintegration of telephones, fiberoptics,  
24 computers and communications that are relocated out of the  
25 annexed area, \$53,000.

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1                   We've also added the retirement of the annexed  
2 members' patronage obligation. This involves capital  
3 credits, an issue that's discussed by Mr. Strickland.  
4 There's \$400,000 involved in that.

5                   Under the breakdown we have in front of you,  
6 the total that Intercounty believes the evidence supports is  
7 \$4,517,253.40.

8                   But you'll notice that there are some pieces  
9 of paper down here, and you will remember that Intercounty  
10 sought permission to file supplemental testimony for  
11 Mr. Vernon Strickland. That has been overruled. The  
12 Commission has allowed us to file an offer of proof on that.  
13 If the offer of proof is somehow accepted, that would add an  
14 additional \$371,000 to consider for the fair and reasonable  
15 compensation figure, and that would drive the figure to  
16 4.8 million, \$4,888,353.40.

17                   We are going to call Mr. Jim Ledbetter.  
18 Mr. Ledbetter is one of the principals in an engineering  
19 firm in Springfield, Ledbetter, Toth & Associates. It's a  
20 45-person firm of consulting engineers. The firm has  
21 performed services for investor-owned utilities, municipal  
22 electric utilities and electric cooperatives.

23                   He is responsible for providing engineering  
24 services in the areas of electrical system design, planning,  
25 job estimates and general consulting to rural electric and

1 municipal clients in Missouri, Arkansas, Oklahoma and Kansas  
2 and Illinois. He has approximately 33 years of experience  
3 as an engineer.

4                   For purpose of the calculations you will find  
5 in his testimony, Intercounty supplied him an inventory and  
6 a series of staking sheets which have been compiled by  
7 Intercounty itself. Mr. Ledbetter made a random sample  
8 check of the staking sheets and considered them to be an  
9 accurate representation of the facilities located in the  
10 area.

11                   He then used average unit prices for similar  
12 facilities that were derived from a contractor's bid on a  
13 proposal which his firm prepared for the Lake of the Ozarks  
14 project. These unit prices were then applied for the  
15 inventory obtained from the staking sheets and extended to  
16 provide a reasonable estimate of the costs to duplicate  
17 these facilities in the annexed area. He then added a  
18 reasonable cost of engineering, staking, right of way  
19 acquisition and right of way clearing that would be required  
20 to build the project.

21                   The depreciation approach that are used by the  
22 parties is going to be an issue for you. For the  
23 depreciation of these facilities, Mr. Ledbetter made use of  
24 a system-wide number which Intercounty uses for depreciation  
25 of its system pursuant to regulations governing its

1 accounting system. The method is consistent with the way in  
2 which other utilities account for depreciation. I say  
3 utilities. Other cooperatives at least.

4           Intercounty does not have a vintage accounting  
5 system for electrical distribution systems or its  
6 facilities. Intercounty's records and accounting are  
7 typical of most all rural electric cooperatives and many  
8 utilities.

9           The value which is ultimately arrived at by  
10 Intercounty is far different from the one calculated by RMU.  
11 RMU has set up a way of using plat data as the basis for  
12 aging the facilities in the area. Intercounty's testimony  
13 is that there is no correlation between those plat dates and  
14 the actual age of Intercounty's facilities.

15           The method does not take into account facility  
16 additions or replacements. Many of our lines have been  
17 relocated to provide for construction of sheets and extend  
18 service life. The method used by Rolla does not accurately  
19 take that into account.

20           We believe that you'll find the system-wide  
21 depreciation rate superior to the ones that have been  
22 submitted by RMU and we prefer that they be used.

23           I mentioned the relocation of the main lines.  
24 That is a reintegration cost as it would be described in the  
25 statute. Intercounty has made a substantial investment in

1 facilities required to serve this area and to facilitate  
2 system reliability and maintenance. When building new  
3 facilities, it is standard practice to consider the future  
4 land use and electrical load in an area so that the new  
5 facility will not become obsolete too early.

6               This is considered in Intercounty's system  
7 planning, and most lines, substation location and other  
8 facilities are designed to serve the anticipated future load  
9 in the expected service area.

10              The facilities are being depreciated over 35  
11 years, and that results in extra system costs, new  
12 facilities are underbuilt and actual useful service life to  
13 say only five years.

14              The annexed area would serve most of the  
15 existing tie lines between the circuits and result in  
16 substantially reduced reliability to all customers in the  
17 area both within and outside the annexed area. Intercounty  
18 has just recently rebuilt the north distribution feeder from  
19 its South Rolla substation to 477 MCM to provide for back  
20 feeds, reliability and future growth.

21              Mr. Ledbetter's estimates are outlined on  
22 Exhibits JEL-3, and that's the \$593,000 figure I mentioned.

23              Normalized revenue is also an issue that's  
24 come up between the parties. I'll not go through all of  
25 them, but discounts in patronage capital have not been

1 included in that revenue figure. Using that data we come up  
2 with the 1.5 or so that's represented on that chart.

3 I've talked to you about the cost of  
4 maintaining the facilities to stranded customers and our  
5 office facilities. We think that the evidence will amply  
6 support the figure that you'll see there and, depending upon  
7 the way the offer of proof is handled, for an additional  
8 \$371,000.

9 I would say there is much ahead to see, but to  
10 reiterate what I mentioned earlier, the evidence is  
11 sufficient for the Commission to conclude that the public  
12 interest would not be served by granting this application.

13 If, however, the Commission does agree to  
14 assignment of the territory, the Commission should direct  
15 the City to pay the compensation Intercounty has set out in  
16 its testimony.

17 JUDGE THOMPSON: Thank you, Mr. Comley. I'm  
18 wondering if we could have your chart on an 8 1/2 by 11  
19 sheet of paper?

20 MR. COMLEY: Sure.

21 JUDGE THOMPSON: Thank you. Mr. Dunbar?

22 MR. DUNBAR: May it please the Commission,  
23 Judge Thompson. My name is Michael Dunbar, and I represent  
24 a group of individuals that are commonly referred to in the  
25 pleadings as Southside Neighbors.

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1 I'm not going to try to repeat the opening  
2 comments that have been made which apply a lot in part to  
3 the Southside Neighbors. So I'll try to address my comments  
4 in the opening, mainly dealing from the public interest.

5 The individuals that I represented are not  
6 corporations. They're not city municipalities. They're  
7 individuals that live within the Southside area. These are  
8 the people who have been members of Intercounty for, many of  
9 them for over 20 years who have an interest in this. In  
10 their mind they are the public.

11 The Southside annexation became final on  
12 June 8th, 1998, and this is the area that's at issue at this  
13 point in time. The public has consistently been advised by  
14 the City of Rolla, or RMU, Rolla Municipal Utilities,  
15 consistently that they would continue to receive their  
16 services from Intercounty. It is in their belief that as  
17 they are the public, that they should be heard from.

18 Now, how do we go about presenting that to the  
19 Commission? The first way is through the testimony of Don  
20 Priest. He's a member of Intercounty. Also, he is one of  
21 the Southside Neighbors. Mr. Priest's testimony is very  
22 forthcoming, and he gives his beliefs per the view of the  
23 public.

24 And how does he arrive at that view of the  
25 public? Well, I believe that the two Commissioners that

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1 were kind enough to attend the public hearing in the City of  
2 Rolla will recall the numbers of people that were there.  
3 They were the public.

4               Also they'll recall the number of people who  
5 showed up who raised their hands and said, I'm a member of  
6 Intercounty. They will recall the testimony, and the other  
7 Commissioners will have that from the transcript, of those  
8 individuals who participated in the public hearing. Those  
9 individuals all stated that they wanted to keep their  
10 service with Intercounty. They are the public. They wanted  
11 to keep it as it is. That's important to them.

12              Now, I know that there were a lot of  
13 individuals who were there who did not speak, but remember,  
14 these are individuals. These are not attorneys. They're  
15 not corporations. They're not cities. They're individuals  
16 who decided that they will come forward and speak, and  
17 that's hard for a lot of people to do.

18              You'll also recall that you have in the direct  
19 testimony of Mr. Priest the city minutes from the City of  
20 Rolla dating back as far as March of 1995, and in those  
21 minutes they state that under the present flipflop law that  
22 the City would not be allowed to serve those individuals who  
23 are currently members of Intercounty. It starts way back  
24 before the annexation process started. It starts back at  
25 the public hearings.

1                   There were several revisions of the Plan of  
2 Intent. All the Plan of Intents are before you through  
3 various testimony of the different individuals involved. If  
4 you'll look at the first Plan of Intent, it makes no mention  
5 of utility services as far as electric suppliers.

6                   The next two Plan of Intents both contain the  
7 same statement with regards to what is to happen if the  
8 annexation is approved. It states, The areas within the  
9 proposed annexation that are now receiving electric service  
10 from a rural electric coop would continue to do so. RMU  
11 would not be allowed to serve any of these properties. Any  
12 new development within the area would receive electric  
13 services from RMU.

14                  And it skips on down a few sentences and  
15 states, Proposed financing of electric extensions into the  
16 proposed annexation area is to use electric reserve funds to  
17 install any new lines.

18                  From that you can tell the public has  
19 consistently been informed that those members of Intercounty  
20 will be left alone and continue to be served by Intercounty.  
21 38 days later the City of Rolla, after the annexation became  
22 effective in June of 1998, published their notice that they  
23 intended to attempt to serve those members of Intercounty.

24                  The Public Counsel has submitted over a  
25 hundred letters from individuals who reside within the area

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1 of the annexed area that say they want to have their  
2 services continued by Intercounty. Again, these are  
3 individuals.

4                   You also have before you a State Auditor's  
5 report of Missouri dated March 23, 1998. This deals with  
6 the expenditures of funds by RMU and the concerns of the  
7 citizens that live within the annexed area.

8                   The State Auditor's report which is attached  
9 to Mr. Priest's testimony states that RMU has expended  
10 approximately \$1.3 million during the past five fiscal years  
11 to promote economic development or industrial development  
12 within the City of Rolla or pay general expenses.

13                   Expenditures of this nature do not appear to  
14 be appropriate uses of municipal utility moneys. A city may  
15 expend money to promote economic development or industrial  
16 development and for the general city operations.

17                   RMU moneys are earned from the municipal  
18 utility and should be used only for that purpose. This  
19 results that utility rates and charges may be set higher  
20 than required to recover actual costs.

21                   These are the things that weigh heavy in the  
22 minds of the public who are proposed to be served by RMU.  
23 The rest of the comments that are made by the people that  
24 attended the public hearing that spoke and Don Priest's  
25 testimony is the electric service of Intercounty is

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1 dependable. Intercounty is owned by the members. They  
2 elect the board. They control the destiny. It's not a  
3 bureaucracy.

4 Intercounty through the testimony will be  
5 shown is set up of a board of directors, and they have a  
6 manager. Rolla Municipal Utilities is controlled by a board  
7 of public works who has a manager, then a city council, then  
8 a mayor, and then a public administrator.

9 Members receive capital credits, which I  
10 commonly refer to as refunds. If Intercounty basically can  
11 keep within their structure, they refund utility moneys back  
12 to its members. This is important to the members. There's  
13 no testimony that RMU has ever given a refund or a credit to  
14 any of the citizens of Rolla.

15 Ease of access to the facilities of  
16 Intercounty, another important item. They have a facility  
17 that's located in close proximity to its members, and these  
18 members enjoy the ease of access, not only to the facility,  
19 but to the people who are responsible for Intercounty.

20 The testimony will also bear out that  
21 presently there are someone 113 Intercounty members that are  
22 being served that live within the City of Rolla. This is in  
23 addition to 286. There are members of Intercounty right now  
24 within the City of Rolla.

25 Another cause of concern to the members was

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1 the testimony of Dan Watkins that if the price is set too  
2 high -- and we'll find this in his testimony. If the price  
3 is set too high by Intercounty, then RMU may want to decide  
4 if this is economically feasible.

5                   The first time the citizens that reside, the  
6 Southside Neighbors, heard of a so-called franchise test  
7 that Intercounty may be required to pay to Rolla to keep  
8 within this territory was done through these hearings that  
9 are being conducted now. It was never mentioned in any of  
10 the city council minutes. It was never mentioned in the  
11 Plan of Intent. It was never mentioned in any of the  
12 testimony until now that there would be a request made to  
13 Intercounty to pay a franchise tax.

14                   We believe that at the conclusion of this when  
15 the Commission hears all the evidence and has the  
16 opportunity to read all the testimony, that the Southside  
17 Neighbors will have submitted a case and ample evidence that  
18 the assignment of the exclusive territory and transfers of  
19 Intercounty facilities requested by RMU is not in the public  
20 interest.

21                   Thank you very much.

22                   JUDGE THOMPSON: Thank you, Mr. Dunbar.

23 Ms. O'Neill?

24                   MS. O'NEILL: Good morning, Commissioners. My  
25 name is Ruth O'Neill. I represent the Office of the Public

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1 Counsel.

2           As the Commission knows, Public Counsel has  
3 not taken an official position on either of the ultimate  
4 issues in this case, 'the first whether or not this transfer  
5 is in the public interest or, if it is, in the amount -- the  
6 amount of compensation that would be appropriate for  
7 Intercounty.

8           However, we have admitted this morning three  
9 exhibits which consist of a total of 117 letters that Public  
10 Counsel and the General Counsel's Office for Staff have  
11 received from people who are currently residents of the  
12 affected area or who work in the affected area or who own  
13 property there.

14           Public Counsel's offered these exhibits  
15 because we believe that the Commission should take the  
16 opinions expressed in these letters into account. The  
17 Commission's charged with determining what is the public  
18 interest in this case, and the writers of these letters are  
19 members the public.

20           I would ask that you consider the positions  
21 expressed by the people who will be most affected by the  
22 Commission's decision in this case.

23           Public Counsel's general purpose, as you know,  
24 is to represent ratepayers, customers generally of private  
25 regulated utilities before this board, before this

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1 Commission.

2                   Generally, Public Counsel believes that where  
3 utility service is provided by a municipality, such as  
4 Rolla, those customers have recourse through the ballot box  
5 to the people who are ultimately responsible for setting  
6 their rates and providing their service and, therefore, they  
7 can protect their interests in that way.

8                   Likewise, generally, customers of a rural  
9 electric coop such as Intercounty are members and co-owners  
10 of that coop and elect that board of directors and can voice  
11 their opinions that way.

12                   You will see by reviewing these 117 letters  
13 that are in Exhibits 16, 17 and 18 that the customers who  
14 receive service in this affected area are ready, willing and  
15 able to express their opinions and voice their own  
16 interests.

17                   We believe that whichever electric provider  
18 ends up providing service to these customers, they will  
19 continue to eloquently state their positions in the future.

20                   Public Counsel's main consideration is to  
21 ensure that customers receive safe, reliable electric  
22 service at just and reasonable rates. We believe that at  
23 current rates and levels of service, both the City and  
24 Intercounty are capable of meeting these requirements.

25                   The statute that brings us here and gives the

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1 Commission jurisdiction over this matter is one that is  
2 seldom employed to take a matter to hearing, and we are here  
3 basically because the parties have not been able to come to  
4 terms and, therefore, they are asking you to step in and do  
5 what they were unable to do by agreement.

6                   We ask the Commission to undertake this task,  
7 giving the positions of the ratepayers due consideration  
8 along with all the other relevant factors in deciding what  
9 to do in this case.

10                   Thank you.

11                   JUDGE THOMPSON: Thank you, Ms. O'Neill.  
12 Mr. Frey.

13                   MR. FREY: Thank you, your Honor. May it  
14 please the Commission.

15                   We are here today pursuant to Section 386.800  
16 of the Revised Missouri Statutes. As has been stated more  
17 than once, I think, this is a unique case in that it is the  
18 first time a municipality has come before the Commission  
19 seeking an order that both authorizes it to acquire the  
20 facilities and customers of a rural electric cooperative and  
21 establishes fair and reasonable compensation to the  
22 cooperative for the municipality's right to do so.

23                   Because we are plowing new ground here, the  
24 Commission's determination in this case will quite likely be  
25 heavily scrutinized by various interested parties.

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1 Over the years the Staff has participated in  
2 numerous cases involving territorial agreements, facilities  
3 exchanges and customer exchanges. However, for the first  
4 time the Staff has actually weighed in on the matter of the  
5 qualification of costs involved in connection with the issue  
6 of fair and reasonable compensation to Intercounty for  
7 customer and facilities exchange.

8 In doing so, the Staff has attempted to limit  
9 its suggestions to cost issues where it felt it had  
10 something meaningful to contribute. Staff declined, for  
11 example, to offer any valuations of the costs of detaching  
12 and reintegrating Intercounty's system, recommending instead  
13 that these costs be developed through a competitive bidding  
14 process.

15 In addition to participating in the valuation  
16 process, the Staff sought to act as a mediator and a  
17 facilitator, always looking for common ground and pointing  
18 out areas of agreement and potential agreement between the  
19 parties and among the parties in the hope the case could be  
20 settled without the need for a hearing. Obviously, those  
21 efforts ultimately were not successful.

22 Under the governing statute, in order to prove  
23 the application of Rolla Municipal Utilities in this case,  
24 the Commission must first find that the transaction is in  
25 the public interest. If the Commission so finds, it must

1 then decide the matter of fair and reasonable compensation  
2 to be paid to Intercounty for facilities and customers  
3 subject to transfer.

4           In addition, the statutory language is such  
5 that it is at least arguable that the Commission, if it so  
6 chooses, may also draw boundaries delineating the exclusive  
7 service territories of the two utilities.

8           The Staff's position is that the acquisition  
9 by RMU of the facilities and customers at issue is in the  
10 public interest.

11           Staff's primary rationale is that, given that  
12 the annexation is already a fact and, therefore, Intercounty  
13 is now statutorily prohibited from setting new meters in the  
14 recently annexed area, an unnecessary duplication of  
15 facilities would be required in order for both utilities to  
16 serve in the same area with the attendant ramifications,  
17 including concerns about costs, the safety of the public and  
18 the utility workers and aesthetics. Indeed, it may be  
19 argued that the statute exists for the very purpose of  
20 addressing this reality.

21           With respect to cost considerations, absent  
22 the proposed transfer, Intercounty would, in effect, be left  
23 to provide service to an area with reduced efficiency as the  
24 cooperative finds itself unable to fully utilize its  
25 facilities stranded within the city limits.

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1                   This is in contrast to the prospects for RMU  
2 which can expect to take advantage of growth within the area  
3 of annexation. Staff is also persuaded by the fact that the  
4 rates are not really an issue in this case in the sense that  
5 Intercounty members subject to transfer will not be facing  
6 higher rates for electricity and may very well receive  
7 service at lower cost.

8                   With regard to fair and reasonable  
9 compensation, the statute sets forth five general costs  
10 categories that should be considered in establishing the  
11 appropriate amount. The parties have narrowed the list to  
12 four categories that may be applicable in this case, namely:  
13 the reproduction costs new less straight line depreciation  
14 of the facilities in question; 400 percent of gross revenues  
15 for the 12-month period preceding annexation; the costs of  
16 detaching Intercounty facilities and reintegrating the  
17 cooperative system; and any other costs reasonably incurred  
18 in connection with the transaction. The parties agree that  
19 the fifth category involving taxes is not an issue in this  
20 case.

21                   The effort to qualify the elements of cost has  
22 been hampered somewhat by the unavailability of data. Lack  
23 of information was particularly troublesome in connection  
24 with the need to come up with a value for an amount of  
25 depreciation of Intercounty's assets subject to transfer.

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1                   In particular, the data showing the average of  
2 the equipment -- excuse me -- showing the age of the  
3 equipment involved is simply not available. As a result,  
4 the three primary parties filing testimony, namely  
5 Intercounty, RMU and the Staff, all developed different  
6 methodologies for estimating the appropriate dollar value to  
7 be assigned for depreciation.

8                   Although each of the parties believes its  
9 method is the best, the fact is that all of them have  
10 shortcomings and, not surprisingly, Rolla's method suggests  
11 the most advanced age for the facilities it wishes to  
12 purchase while the Intercounty approach suggests the  
13 youngest age of such facilities.

14                  Staff's approach yields a value somewhere in  
15 between. The Commission may well determine, especially in  
16 the area of depreciation, that a compromise is indicated.

17                  Briefly, considering these four categories, I  
18 talked a little bit about depreciation. I'll just mention,  
19 for purposes of estimating it, you need to come up with four  
20 essential elements, namely the reproduction or replacement  
21 costs of the subject facilities, the number of years over  
22 which they're scheduled to be depreciated on a straight line  
23 basis, some measure of the age of the facilities, and the  
24 date as of which that age is measured.

25                  The parties are in general agreement only as

1 to the depreciation rate of the subject equipment; that is,  
2 it is to be depreciated at a rate of 2.8 percent per year.

3               For the reproduction costs, Staff used the  
4 average replacement costs in the Rolla area, including  
5 overhead loading. As noted earlier, the absence of data  
6 made it difficult to determine the age of the facilities at  
7 issue. Staff developed the age of the facilities based on  
8 transformer installation dates. As a cutoff date for  
9 depreciation of the assets, Staff used the known annexation  
10 date of June 8th, 1998, the effective date of annexation.

11              Intercounty is also proposing that its  
12 district office building valued by the cooperative at  
13 roughly a million dollars be included, over RMU's objection,  
14 in any sale of the facilities ordered by the Commission.  
15 There's an additional claim of \$53,000 associated with the  
16 reintegration of a new office building for Intercounty.

17              The Staff believes that the structure is still  
18 useful to Intercounty and should remain with the  
19 cooperative.

20              With regard to the second element, the  
21 400 percent of gross revenues from the 12-month period  
22 preceding annexation, in this area Staff looked at the gross  
23 revenues provided by Intercounty and found no reason to  
24 adjust these figures.

25              With regard to detachment, reintegration of

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1 the Intercounty electric system, for the most part Staff  
2 recommended that these costs be determined based on a  
3 competitive bidding process among outside contractors.

4           The fourth element are the other costs  
5 reasonably incurred in connection with the transaction, and  
6 in this general category, Staff is opposed to including  
7 virtually all of the specific items listed; namely,  
8 adjustments paid to Rolla for existing easements or the lack  
9 thereof, PCB testing of Intercounty's facilities, joint fees  
10 collected pursuant to Intercounty's pole attachment  
11 agreement and Intercounty's capital credits.

12           To the extent that any additional wholesale  
13 power costs are properly quantified, Staff is of the opinion  
14 that such costs may be included.

15           We have, of course, very recently had a ruling  
16 on the application or the motion to file supplementary  
17 testimony in this regard, and apparently there's more to  
18 come with regard to this issue.

19           For the reasons stated, Staff takes the  
20 position that the Commission should order the transfer from  
21 Intercounty to Rolla of facilities and customers in Rolla's  
22 newly annexed area and order a compensating payment by RMU  
23 to Intercounty in the amount of \$1,543,146, plus the  
24 reasonable cost of activities associated with detaching  
25 facilities and reintegrating Intercounty's system.

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1                   Thank you very much.

2                   JUDGE THOMPSON: Thank you, Mr. Frey.

3                   I will advise counsel at this time that in

4 your briefs I would like you to discuss and analyze the

5 scope of the Commission's authority under this statute. In

6 particular, can the Commission assign any part or all of the

7 annexed territory as the exclusive service area of

8 Intercounty for the future and, if so, would Intercounty be

9 able to serve new structures?

10                  At this time, Mr. Duffy, would you call your

11 first witness.

12                  MR. DUFFY: Call Andrew Marmouget to the

13 stand.

14                  (Witness sworn.)

15                  JUDGE THOMPSON: Please take your seat. Spell

16 your name for the reporter, if you would.

17                  THE WITNESS: Andrew Marmouget. Last name is

18 M-a-r-m-o-u-g-e-t.

19                  JUDGE THOMPSON: Thank you. Please proceed.

20 ANDREW MARMOUGET testified as follows:

21 DIRECT EXAMINATION BY MR. DUFFY:

22           Q.       Would you state your name for the record,

23 please.

24           A.       Andrew A. Marmouget.

25           Q.       Mr. Marmouget, do you have in front of you

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1 what's been marked for purposes of identification as Exhibit  
2 No. 1 and identified as prepared surrebuttal testimony of  
3 Andrew A. Marmouget?

4           A.       Yes.

5           Q.       Do you have any -- do you have any corrections  
6 or additions to that document?

7           A.       No.

8           Q.       If I asked you the same questions that appear  
9 in that document this morning, would your answers be the  
10 same as they appear therein?

11          A.       Yes.

12          Q.       Are those answers true and correct to the best  
13 of your knowledge, information and belief?

14          A.       Yes.

15                   MR. DUFFY: At this time I offer into evidence  
16 Exhibit No. 1, and I tender Mr. Marmouget for  
17 cross-examination.

18                   JUDGE THOMPSON: Thank you, Mr. Duffy. Do I  
19 hear any objections to receipt of Exhibit No. 1?

20                   (No response.)

21                   Hearing no objections, Exhibit No. 1 is  
22 received and made a part of the record of this proceeding.

23                   (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

24                   JUDGE THOMPSON: Cross-examination, Mr. Frey?

25                   MR. FREY: Thank you, your Honor.

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1 CROSS-EXAMINATION BY MR. FREY:

2 Q. Mr. Marmouget -- did I pronounce that right?

3 A. Yes.

4 Q. Your testimony was with regard to  
5 depreciation, correct?

6 A. Yes.

7 Q. And can you just tell us briefly why we  
8 depreciate assets, sir?

9 A. You depreciate assets in order to allocate the  
10 cost of those assets to the years benefited, so an asset  
11 doesn't get expensed all in one year. It gets allocated to  
12 the years that get benefit from that asset.

13 Q. Thank you. And how do you determine a  
14 depreciation rate?

15 A. Under General Accepted Accounting Principles  
16 there are several different depreciation methods. The  
17 straight line basis requires that the historical cost of the  
18 asset be depreciated out over the estimated useful life of  
19 that asset.

20 For example, if you bought an asset for \$100  
21 and the estimated useful life of that asset is ten years,  
22 you would depreciate that asset over ten years at -- it  
23 would be \$10 per year or 10 percent per year.

24 Q. How would you define useful life?

25 A. As long as the asset is functional.

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1 Q. And how is the depreciation rate expressed?

2 A. I'm not quite sure I understand your question

3 when you say expressed.

4 Q. Well, is it a fraction? Is it a percentage?

5 Is it a ratio?

6 A. It could be expressed in a term of a

7 percentage. When you go to calculate it and record it on

8 the financial statements, you take the cost of the asset,

9 divide it out by what the estimated useful life is, and that

10 will give you a dollar figure of what needs to be an expense

11 each year, and that dollar amount can be expressed as a

12 percentage.

13 Q. What annual rate would you apply to the

14 facilities subject to transfer in this case?

15 A. The percentage rate --

16 Q. Percentage rate, yes.

17 A. -- would be 2.8 percent. That's what

18 Intercounty's depreciation rate is on the information that

19 I've seen.

20 Q. And did you use that number in developing your

21 depreciation figure?

22 A. I used the 2.8 percent in my testimony, yes.

23 Q. If we have an estimate of the replacement

24 costs for electric facilities, we can determine the value

25 now; is that correct?

1           A.       That's correct.

2           Q.       And you've testified that the depreciation  
3 rate is 2.8 percent a year. What other component is  
4 necessary in order to determine the remaining or  
5 undepreciated value as of a certain time?

6           A.       You just need to know what the age of the  
7 asset is in order to depreciate, and then the estimated  
8 useful life of that asset in order to depreciate those  
9 assets.

10          Q.       Would you agree that this has proven to be one  
11 of the real challenges in this proceeding, to come up with  
12 the age of the equipment?

13          A.       Yes, but I believe there are means available  
14 that have been told to me that the age can -- an estimate of  
15 the age can be determined.

16          Q.       And you selected one of those means; is that  
17 correct?

18          A.       I did not directly address that in my  
19 testimony.

20          Q.       Is it correct that the older -- the older the  
21 facility, then the lower its remaining value?

22          A.       That's correct, if improvements have not been  
23 made.

24                   MR. FREY: Okay. Thank you, Mr. Marmouget. I  
25 have no further questions.

1 JUDGE THOMPSON: Ms. O'Neill?  
2 MS. O'NEILL: No questions, your Honor.  
3 JUDGE THOMPSON: Thank you, Ms. O'Neill.  
4 Mr. Comley?  
5 MR. COMLEY: Thank you, Judge.  
6 CROSS-EXAMINATION BY MR. COMLEY:  
7 Q. Make sure I can be heard here. Mr. Marmouget,  
8 you're employed by Davis, Lynn & Moots; is that correct?  
9 A. That's correct.  
10 Q. And where is that firm located?  
11 A. In Springfield, Missouri.  
12 Q. How long have you been there with that firm?  
13 A. Four years.  
14 Q. Four years. And this firm has audited  
15 rural -- rather Rolla Municipal Utilities in the past; is  
16 that correct?  
17 A. That's correct.  
18 Q. For how many years has your firm audited RMU?  
19 A. I don't know the answer to that question. I  
20 know it has been several years. I have been involved in the  
21 audit for the past three years.  
22 Q. Past three years. So you have been with the  
23 firm since you -- you've been with the firm of Davis Lynn &  
24 Moots since you graduated from college?  
25 A. That's correct.

1 Q. And then the last three years you started  
2 audits with RMU in 1997?

3 A. That's correct.

4 Q. Were you the supervising auditor on those  
5 audits?

6 A. I have been for the past two years.

7 Q. Past two years. Now, you've been a CPA since  
8 1999; is that correct?

9 A. That's correct.

10 Q. You also handle municipal accounts, including  
11 municipal utilities. Is that what you do mostly?

12 A. Our firm specializes in governmental audits of  
13 cities, which include utilities.

14 Q. Which include municipal utilities?

15 A. That's correct.

16 Q. The firm does not perform audits of other  
17 electric suppliers; is that correct?

18 A. If you refer to private utilities, no.

19 Q. And electric cooperatives, you don't do audits  
20 for those either, do you?

21 A. No.

22 Q. Are you familiar with the regulations  
23 governing Intercounty and the way it accounts for its  
24 depreciation and accounts for its property?

25 A. I have seen financial information provided by

1 Intercounty on their depreciation.

2 Q. Specifically, are you acquainted with  
3 regulations of the Rural Utility Services of the Department  
4 of Agriculture?

5 A. I know of them, but I'm not an expert on them.

6 Q. Is it a true statement that if one of your  
7 clients would be regulated by a federal government agency,  
8 that any regulations that that agency has pertaining to  
9 accounting would have to be followed; is that correct?

10 A. That's correct.

11 Q. At pages 2 and 3 of your surrebuttal, you  
12 discuss some of RMU's financial expenditures, and that would  
13 be for economic development. Is it correct that RMU makes  
14 an expenditure each year for economic development?

15 A. That's incorrect.

16 Q. That's incorrect. Has it made such  
17 expenditures in the past?

18 A. Yes.

19 Q. And I notice that -- during the years that it  
20 did make those expenditures, do you know whether those  
21 expenditures were added to what the City itself was paying  
22 for economic development?

23 A. What RMU does is it transfers money over to  
24 the City Government for administrative costs, which is a  
25 very normal procedure for utilities, and then the City

1 expends that. It's really a reimbursement. That money has  
2 already been spent, but then that money gets used by the  
3 City whatever purpose as it sees fit.

4 Q. So the amount is paid under a label of  
5 administrative costs, and then it's up to the City on how it  
6 wants to spend that money?

7 A. Well, in reality, the money's already been  
8 spent. It's a reimbursement of the administrative costs of  
9 the utilities.

10 Q. Would those administrative costs then be a  
11 payment for what the City paid for economic development?  
12 I'm trying to get to the point where, how did they make this  
13 payment for economic development at some point?

14 A. Well, the City requested that RMU transfer  
15 money over for economic, it's my understanding, and that's  
16 how it became an issue.

17 Q. And what years was that?

18 A. I'm not sure offhand what year that was.

19 Q. In your testimony you talk about page 16 of  
20 the State Auditor's report cited by Mr. Priest. I think you  
21 say that on page 2 that the State Auditor's Office concurred  
22 on page 16 of their audit report, cited by Mr. Priest, that  
23 RMU spending money on non-utility items as economic  
24 development was a common practice. Is that a correct  
25 reading of your testimony?

1           A.       It's a common practice to transfer money over  
2 to the City for administrative costs, which is in turn used  
3 by the City for whatever purposes they see fit.

4           Q.       Didn't the State Auditor criticize RMU for  
5 making those kinds of payments?

6           A.       Yes.  It's a management recommendation by the  
7 State Auditors.  In fact, it's a very common recommendation  
8 whenever they perform a state audit of a city, but in  
9 reality the City -- it's necessary to transfer the  
10 administrative costs over to the City.  It's a very common  
11 practice, and State Auditors have never come out and said  
12 they can't do that.

13          Q.       They haven't come out and said they can't do  
14 that, but the auditor did definitely criticize the practice  
15 and recommend that it stop; is that correct?

16          A.       It is a management recommendation, yes.

17          Q.       You say the management recommendation, from  
18 the auditor to the management, you're recommended to stop  
19 doing that; is that what happened?

20          A.       Right.

21          Q.       Now, on page 3 of -- on line 3 of page 4 of  
22 your testimony, you talk about your opinion concerning  
23 whether RMU may have to raise electric rates.

24                   First, when you're analyzing this and saying  
25 that based upon RMU's financial condition you don't -- well,



1 let me say this. Are you saying that based upon RMU's  
2 financial condition as of September 30th, 1999, you would  
3 not anticipate as a result of any acquisition of  
4 Intercounty's -- acquisition of Intercounty's facilities  
5 that RMU would have to raise its rates?

6 A. That's correct.

7 Q. Now, when you made that opinion, are you  
8 taking into account the amount that Rolla has indicated it  
9 wants to pay for those facilities in this case?

10 A. I've taken in all suggested amounts for the  
11 price.

12 Q. So your opinion would include the \$4.5 million  
13 that I've addressed in my opening remarks, give or take a  
14 few thousand dollars, I think?

15 A. Yes.

16 Q. You have taken those into account? Let me ask  
17 you this. Were you aware that Rolla Municipal Utilities has  
18 entered in a new wholesale power agreement?

19 A. Yes.

20 Q. Did you analyze that wholesale power agreement  
21 in connection with your opinion that rates would not rise?

22 A. Yes, I have considered it based on the  
23 financial position as of September 30th, 1999.

24 Q. When you say the financial position, did you  
25 compare the financial position of the company, of the RMU

1 rather, and what it would probably entail under the terms of  
2 the new wholesale power agreement?

3 A. Yes.

4 Q. So you've examined the impact that wholesale  
5 power agreement would have on the financial condition of  
6 RMU. Am I reading your -- am I understanding your testimony  
7 correctly?

8 A. I have not fully analyzed that, no. I am  
9 aware of some of the terms of that agreement. So I am aware  
10 of it, but I have not analyzed it.

11 Q. So is it your testimony, then, that you've  
12 looked at the agreement, but you do not know whether the  
13 rates and charges for that wholesale power agreement that  
14 RMU will pay will affect its financial condition?

15 A. There's a lot of factors that go into it such  
16 as revenue that's going to be produced by this project as  
17 well, and there's a lot of factors that need to be analyzed,  
18 and I have not analyzed all the factors.

19 Q. Did you analyze the wheeling arrangement that  
20 the City of Rolla or RMU has entered in connection with this  
21 wholesale power contract?

22 MR. DUFFY: Objection. There's no evidence  
23 regarding any wheeling arrangement.

24 BY MR. COMLEY:

25 Q. Do you know whether the City of Rolla or RMU

1 has entered a wheeling arrangement in connection with the  
2 wholesale power agreement that it's just recently entered?

3 A. No.

4 Q. Mr. Marmouget, I want to discuss this  
5 depreciation issue with you, and I think what I'd like to do  
6 is try to do it by example if I can. Did you happen to  
7 bring a calculator with you to the stand?

8 A. No, I did not.

9 Q. Let me see if I can get one for you. I'll let  
10 you borrow this one. I'll have another one handy here, too,  
11 in case I need it. I don't profess to have any great skill  
12 at this. I'm going to go over here to the chart and see if  
13 we can come up with a way to figure out the position you're  
14 taking on depreciation.

15 For the next several questions I want to ask  
16 you, I want to take you through a hypothetical on purchase.  
17 Let's talk about an electrical substation. So we'll call it  
18 a substation. In 1980 the supplier buys the substation for  
19 \$100,000. Let's presume that it has a 35-year useful life.  
20 I'll use UF as useful life.

21 If it has a 35-year useful life, what rate of  
22 depreciation would that convert to, do you know?

23 A. Talking about the percentage rate?

24 Q. Expressed as a percentage.

25 A. Expressed as a percentage? If I've done my

1 math right, it's 2.85 percent.

2 Q. Can we say 2.8 just for purpose of example?

3 A. Correct.

4 Q. I'll put depreciation rate, 2.8 percent. Tell

5 the Commission how you came up with that percentage.

6 A. What I did is I took \$100,000, divided it by

7 30 years. That gave me -- it gave me a number, and then I

8 divided that number by the \$100,000 to get 2.8 percent per

9 year.

10 Q. All right.

11 MR. DUFFY: Excuse me. Did you say 30 years?

12 THE WITNESS: 35 years. I'm sorry.

13 BY MR. COMLEY:

14 Q. All right. Let's assume that after five years

15 the electric supplier needs to make an improvement to that

16 substation. So in 1985 there's an improvement for \$50,000

17 added to that substation. It's also got a 35-year useful

18 life. Is it fair to say that the depreciation rate of

19 2.8 percent would still apply to that improvement?

20 A. That's correct.

21 Q. So we'd have a 2.8 percent depreciation rate.

22 Okay. Let's go 15 years or so into the future. Let's say

23 after 15 years of useful life of this substation the

24 electric supplier has decided to sell it and wants to

25 compute the net book value of the substation.

1                   To compute the net book value, would we need  
2 to deduct the depreciation taken to date on the substation  
3 plus the substation improvement?

4           A.       Correct.

5           Q.       So to compute that -- to compute the  
6 depreciation, we'd have the substation. 1980 was when it  
7 was built. So there's 15 years of depreciation at  
8 2.8 percent; is that correct?

9           A.       That's correct.

10          Q.       So how much would that be per year? How much  
11 depreciation on \$100,000 would be on that?

12          A.       You mean after 15 years?

13          Q.       How much is it per year?

14          A.       It was \$2,857 worth of depreciation per year.

15          Q.       Can we just say 2.8 percent?

16          A.       Percent, it would be 2.8 percent, yes.

17          Q.       So it would be \$2,800 a year?

18          A.       Yes.

19          Q.       And after 15 years, that would be how much?

20          A.       42,000.

21          Q.       And that's 15 times 280 -- 2,800 rather; is  
22 that correct?

23          A.       Correct.

24          Q.       Now let's do the improvement. The  
25 improvement's ten years old, right?

1           A.       Correct.

2           Q.       It was done in 1985, so we have ten years  
3 instead of 15 years of depreciation on it. So we have a  
4 \$50,000 improvement, and its depreciation rate is how much?

5           A.       2.8 percent.

6           Q.       And times 50,000, what do we get?

7           A.       \$1,400 per year.

8           Q.       So we have ten years at \$1,400 per year, and  
9 that would equal?

10          A.       14,000.

11          Q.       14,000. So total accumulated depreciation on  
12 this at this point is?

13          A.       56,000.

14          Q.       56. Okay. That's total depreciation. How  
15 much now is the total investment in that substation?

16          A.       150,000.

17          Q.       And at 15 years, the value of that investment,  
18 150,000, minus the depreciation of 56, did we say?

19          A.       Correct.

20          Q.       That equals what? Can you figure that out on  
21 your calculator?

22          A.       94,000.

23          Q.       I think I did this right. Okay. Now, can we  
24 express depreciation as a factor of the total -- as a factor  
25 of the total investment in the building? Can we do that?

1           A.       I'm not quite sure what you're asking when you  
2 say factor.

3           Q.       Can we express this number as a percentage of  
4 the total investment?

5           A.       Sure.

6           Q.       What do you come up with?

7           A.       62, or rounded 63.

8           Q.       63. What would it be in, say, four digits?

9           A.       62.66.

10          Q.       And can we also express total depreciation as  
11 a percentage of total investment?

12          A.       Yes.

13          Q.       And that would be what in terms of four  
14 digits?

15          A.       37.

16          Q.       .33?

17          A.       Right.

18          Q.       Okay. Now, can we come up with an age of the  
19 substation which takes into account the age of the  
20 substation and its improvement together?

21          A.       I'm not quite sure I know what you're asking  
22 there.

23          Q.       Can we come up with an average age of the  
24 substation and the improvement?

25          A.       You can come up -- I guess you can come up

1 with what an average age of the two together would be.

2 Q. All right. How would we do that? I think you  
3 did it in your testimony.

4 A. I'm not following you.

5 Q. Let's look at -- on page 5 of your testimony,  
6 lines 15 through 22, take a look at the way you calculated  
7 that.

8 A. Oh, are you talking about taking the total  
9 depreciation and dividing it by 2.8 percent?

10 Q. Yes.

11 A. Yeah.

12 Q. So we can take 37.33 and divide that by  
13 2.8 percent, correct?

14 A. Okay.

15 Q. I'll just put 2.8 percent. And what do you  
16 come up with?

17 A. 13.33.

18 Q. 13.33. So we have a substation that's really  
19 15 years old in this example, correct?

20 A. Correct.

21 Q. And it has an improvement that is not as old;  
22 is that correct?

23 A. Correct.

24 Q. And average them together, you come up with an  
25 average age of this facility based upon its depreciation of



1 13.33 years; is that correct?

2 A. Correct.

3 Q. Now, your understanding of the way the

4 Commission is to calculate depreciation in this case is on a

5 straight line basis?

6 A. Correct.

7 Q. That's your testimony? But isn't that a

8 straight line based upon the age of the facilities that are

9 in place?

10 A. Correct.

11 Q. All right. Now, the Commission shouldn't --

12 are you saying that the Commission should presume that all

13 the facilities in the annexed area that we're dealing with

14 should be the same age?

15 A. No.

16 Q. So you'd agree with me that there should be

17 some account for the difference in ages in these facilities;

18 is that correct?

19 A. That's correct.

20 Q. Let's go back to the example a minute. Even

21 though the asset is 15 years old, the manner in which the

22 depreciation for that asset has been computed and the

23 original cost and the cost of improvements combined can be

24 calculated to give that asset an average age; is that

25 correct?

1           A.       An average age, yes.

2           Q.       Now, isn't that exactly what Mr. Ledbetter has  
3 done in this case in this case?

4           A.       No.

5           Q.       He does not compute an average wage for those  
6 facilities?

7           A.       No. My position is no.

8           Q.       What is different about what Mr. Ledbetter did  
9 and what we just did?

10          A.       Mr. Ledbetter's calculation includes many  
11 different depreciation rates, not just 2.8 percent. His  
12 calculation includes depreciation rates on power operated  
13 equipment at 2 percent. It includes vehicle transportation  
14 equipment that's 10 percent, I believe. Transportation  
15 equipment, I think, was 16.6 percent, and other equipment  
16 was 10 percent. But there's a lot of different depreciation  
17 factors that go into that, not just 2.8 percent.

18                   Also, when you go to calculate straight line  
19 depreciation, you have to take the asset individually or the  
20 system addition individually and calculate what the  
21 depreciation is on those items. Otherwise, you would have  
22 factors such as inflation, the rate of population growth  
23 that will skew that number.

24                   And that's what's happened with  
25 Mr. Ledbetter's rate. As the rate of population goes up and

1 the additional additions get added in to total fixed assets  
2 and as inflation and cost goes up, it skews that number.

3           So that's why you cannot calculate  
4 depreciation by taking someone's total fixed assets and  
5 subtracting the total accumulated depreciation. You have to  
6 estimate what the age is of that system.

7           Q.       So if we estimate the age for each and every  
8 one of the assets, you're saying, ideally we'd have to  
9 estimate the age for each and every one of those assets,  
10 correct?

11          A.       Not necessarily. When the system addition  
12 took place.

13          Q.       When the system addition took place?

14          A.       Or when the system originally went in, plus  
15 any additions.

16          Q.       Plus any additions. Now, you know that  
17 Intercounty does not maintain management accounting records;  
18 isn't that correct?

19          A.       I don't know if that's correct or incorrect.

20          Q.       You don't know. Okay. Let me back up.  
21 Ideally under your idea of straight line depreciation, the  
22 way it should being done under the Generally Accepted  
23 Accounting Principles, ideally for purposes of straight line  
24 you would want to see the date of the facility installed and  
25 the date of every addition so that the calculations that we

1 just did on the example could be made?

2           A.       That's correct. That way you would take out  
3 the effects of inflation in the rate of population growth.

4           Q.       Do you think that the inflation rate has been  
5 a big problem in determining depreciation like Mr. Ledbetter  
6 has done?

7           A.       If the system was originally placed in 1970,  
8 yes.

9           Q.       Over 30 years. Now, would you agree with me  
10 that Intercounty uses 2.8 percent depreciation rates for its  
11 electric distribution facilities?

12          A.       For its electric distribution facilities, yes.

13          Q.       So if I back you up a little bit and say, if  
14 we were just dealing with the electrical distribution  
15 facilities and they were at 2.8 percent, your concern about  
16 use of all the other percentages that are in Mr. Ledbetter's  
17 calculations, if they are -- I'm not going to admit that  
18 that they are -- your concern would be eliminated if that's  
19 the case, if we were just talking about electrical  
20 distribution facilities at 2.8 percent?

21          A.       Yeah. You would eliminate the skewing on the  
22 other depreciation rates, but not on the rate of population  
23 growth or inflation.

24          Q.       Now, let me ask you this. Is it fair to say  
25 that Mr. Ledbetter's calculations are derived from using a

1 straight line form of depreciation?

2           A.       No, they are not derived from straight line  
3 depreciation.

4           Q.       Well, let me back up. If we were using only  
5 the 2.8 percent on electrical distribution facilities, isn't  
6 he deriving the factor he uses from the use of straight  
7 line?

8           A.       No.

9           Q.       Well, doesn't straight line have to go into  
10 this in order to get the average age?

11          A.       What Mr. Ledbetter's doing is he's applying a  
12 percentage to this system that is not a straight line  
13 depreciation rate because the straight line depreciation  
14 rate requires that you go back to the age of the system and  
15 any additions to that system.

16                   If you just take an arbitrary rate based on  
17 total fixed assets and total accumulated depreciation,  
18 there's just so many factors that skew that number. That's  
19 why under Generally Accepted Accounting Principles you  
20 cannot apply depreciation in that method.

21          Q.       All right. I don't know if that's the  
22 question I asked you. I understand what you're saying. But  
23 if we're dealing with a depreciation rate of 2.8 percent,  
24 which we admit is the percentage rate that Intercounty uses  
25 for its electrical distribution facilities, and we do

1 exercises just like we did, isn't that how that factor is  
2 determined for an average age of the electrical distribution  
3 facilities?

4           A.       In this example, I mean, I can see it would  
5 work, but you're not taking into consideration inflation and  
6 the rate of population growth, because as the rate of  
7 population growth and more additions and more costs gets put  
8 in there, you're distorting what the actual age of the old  
9 system, a system that's been in place since 1970, for  
10 example, would be.

11           Q.       I think you're missing the question.

12           A.       Okay.

13           Q.       I think you're missing the question. I'll try  
14 to do it better. But are calculations involving straight  
15 line depreciation going into the determination of the factor  
16 that Mr. Ledbetter has used in his testimony?

17           A.       I'm sorry. I just can't draw that conclusion.

18           Q.       All right. Tell the Commission what a  
19 continuing property record is.

20           A.       My definition of continuing property records  
21 is that you track when the asset is placed in service, you  
22 track what -- you estimate what the useful life is, and then  
23 you depreciate that on a yearly basis, and those individual  
24 asset records are to be maintained, and that's a continuing  
25 asset record.

1 Q. And that asset record is an asset record  
2 maintained by Rolla Municipal Utilities, isn't it?

3 A. Yes.

4 Q. And with respect to Rolla, does it maintain  
5 its accounts so that you know exactly when certain additions  
6 were made, each and every asset?

7 A. Yes. The date placed in service is a part of  
8 their fixed asset records.

9 Q. You've stated in your testimony, and I'm not  
10 sure exactly where the cite is, but in your opinion the  
11 statute expects depreciation on the assets to be computed  
12 based upon straight line depreciation. I sent you a Data  
13 Request about that. Do you remember that?

14 A. Yes, I sure do.

15 Q. I think it was Data Request 213. With respect  
16 to your testimony at that point, your answer -- your answer  
17 means to me that you really meant to say that the  
18 depreciation used by Mr. Ledbetter in your opinion is not in  
19 accord with Generally Accepted Contracting Principles for  
20 straight line depreciation; is that correct?

21 A. That's correct.

22 Q. You didn't mean to render a legal opinion  
23 about that; is that correct?

24 A. That's correct.

25 Q. Let me ask you -- I wasn't too clear -- are

1 you familiar with any of the regulations of the Rural  
2 Utility Services concerning accounts for electric utilities  
3 and -- excuse me -- electric cooperatives?

4           A.       I am aware that they are to follow Generally  
5 Accepted Accounting Principles as set forth by the FASB,  
6 Financial Accounting Standards Board, but there are some  
7 regulations that I am not aware of that could be -- that  
8 would only affect the rural cooperatives under RUS  
9 regulations.

10           Q.       Now, with respect to those regulations, you  
11 would consider the published regulations of that agency  
12 authoritative with respect to the entities they govern,  
13 correct?

14           A.       Correct.

15           Q.       And is it possible that in regulations -- and  
16 you're going to have to draw on your experience here, but is  
17 depreciation sometimes defined differently as agencies, what  
18 could be defined as many times over as there are agencies;  
19 is that correct?

20           A.       Terminology?

21           Q.       Yes.

22           A.       Yes.

23           Q.       So if there's a -- would it be possible --  
24 excuse me. I'll withdraw that.

25                    In your experience, do you know in regulations



1 of certain agencies that depreciation and the way  
2 depreciation is done is specifically defined?

3           A.       I know of regulations that state that they are  
4 to use either a specific depreciation rate under -- they're  
5 to follow Generally Accepted Accounting Principles. I'm not  
6 aware of any type of rate that's different from Generally  
7 Accepted Accounting Principles.

8           Q.       Are you aware of or are you familiar with  
9 Uniform Systems of Accounts Bulletin for the Rural Utility  
10 Services, Bulletin 1767B-1?

11          A.       No, I'm not.

12          Q.       All right. In connection with your testimony,  
13 were you given any of Intercounty's answers to Rolla's Data  
14 Requests to us, to Intercounty?

15          A.       RMU's answers to Data Requests?

16          Q.       Excuse me. I meant to say Intercounty's  
17 answers to any of RMU's Data Requests.

18          A.       Yes, I've seen the Data Requests.

19          Q.       Do you recall which answers you reviewed in  
20 connection with your testimony? I notice you did see the  
21 audit of Intercounty's facilities by Schmidt & Company; is  
22 that correct?

23          A.       Yes, I did see that.

24          Q.       And that was in response to one of RMU's Data  
25 Requests?

1           A.       That is correct.

2           Q.       Do you remember seeing any other?

3           A.       Yes, RUS Form 7.

4           Q.       You saw the Form 7. Did you see any other

5 information about how to interpret that Form 7?

6           A.       No.

7           Q.       You did not.

8                   MR. COMLEY: I'll be just a minute.

9                   JUDGE THOMPSON: Why don't we go ahead and

10 take five minutes at this time while you're looking through

11 your documents.

12                   MR. COMLEY: Thank you, Judge.

13                   (A BREAK WAS TAKEN.)

14                   JUDGE THOMPSON: Let's pick up where we left

15 off with Mr. Marmouget.

16 BY MR. COMLEY:

17           Q.       Mr. Marmouget, in connection with the

18 preparation of your surrebuttal testimony and perhaps today,

19 did you have a chance to review a document which was

20 entitled Revision of REA Bulletin 183-1 that was attached to

21 an answer to one of RMU's Data Requests?

22           A.       I don't remember offhand if I have.

23                   MR. COMLEY: I'd like to show this document to

24 the witness.

25                   JUDGE THOMPSON: You may approach. And what

1 was the name of the document again?

2                   MR. COMLEY: It's called Revision of REA  
3 Bulletin 183-1. At the top of the page it's United States  
4 Department of Agriculture Rural Electrification  
5 Administration.

6                   JUDGE THOMPSON: Please proceed.

7 BY MR. COMLEY:

8           Q.       Could you take a look at that document. It's  
9 Data Request No. 2 that was submitted to Intercounty from  
10 Rolla. Are you familiar with the first attachment?

11          A.       This here (indicating)?

12          Q.       Yes, the Financial and Statistical Report.

13          A.       Yes, I am.

14          Q.       You are familiar with that?

15          A.       Yes.

16          Q.       Are you familiar with the second attachment?

17          A.       I have seen this, but I have not reviewed it.

18          Q.       You have seen it. Did you look at it at all  
19 in connection with your testimony?

20          A.       With my testimony, no. But I have reviewed  
21 this front page, though.

22          Q.       Do you know whether that bulletin is a  
23 bulletin which would regulate Intercounty's method of  
24 accounting for its distribution plant and its transmission  
25 plant and all of its assets?

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1           A.       I believe it would be prepared in accordance  
2 with it since it is submitted to the RUS.

3           Q.       Okay. I'm going to direct you to page 2 of  
4 the bulletin that's marked -- that is denominated 183-1  
5 under Methods of Depreciation. In reading that, can you  
6 tell me, what does the REA recommend as the method of  
7 depreciation for its borrowers?

8           MR. DUFFY: I'm sorry. What does who  
9 recommend?

10          MR. COMLEY: What does the REA recommend?

11          MR. DUFFY: REA.

12          THE WITNESS: I'm sorry. State your question  
13 again.

14 BY MR. COMLEY:

15          Q.       What does at REA recommend to its borrowers on  
16 the matter of -- on the method of depreciation?

17          A.       The use of straight line method.

18          Q.       That's all I wanted to know.

19          MR. COMLEY: Judge, that ends my inquiry.  
20 Thank you very much.

21          JUDGE THOMPSON: Thank you, sir. Mr. Dunbar?

22          MR. DUNBAR: Thank you, Judge.

23 CROSS-EXAMINATION BY MR. DUNBAR:

24          Q.       Mr. Marmouget, my questions will be primarily  
25 directed at your surrebuttal of Mr. Priest that gets you

1 back focused off depreciation. Okay?

2 A. (Witness nodded.)

3 Q. With regards to your surrebuttal testimony,  
4 basically it dealt with that it was okay for the City of  
5 Rolla to expend money on economic and industrial  
6 development; is that correct?

7 A. RMU transferred money to the City who in turn  
8 spent money on economic development.

9 Q. But the State Auditor, you recall reviewing  
10 her report that was attached to Mr. Priest's testimony? Do  
11 you recall that?

12 A. Yes.

13 Q. And you'll recall that the State Auditor made  
14 a determination that RMU had expended approximately  
15 \$1.3 million during the past five fiscal years to promote  
16 economic or industrial development within the City of Rolla.  
17 Do you recall that sentence that was in the Auditor's  
18 report?

19 A. No, I do not recall that specific sentence.

20 MR. DUNBAR: May I approach, Judge?

21 JUDGE THOMPSON: You may.

22 MR. DUNBAR: Thank you. And for the record,  
23 what I'm referring to is contained within the testimony of  
24 Mr. Don Priest that's entitled State Auditor of Missouri,  
25 dated December the 11th, 1997.

1 JUDGE THOMPSON: Thank you. Please proceed.

2 MR. DUFFY: What page are we on?

3 MR. DUNBAR: I'm sorry. Page 17.

4 BY MR. DUNBAR:

5 Q. Mr. Marmouget, am I pronouncing it correctly?

6 A. Yes, close enough.

7 Q. Thank you. This is the State Auditor's report

8 that I just referred to; is that correct?

9 A. Yes.

10 Q. And it's dated December 11th, 1997?

11 A. Correct.

12 Q. And what I'm referring to is at the top of

13 page 17. I guess basically it starts at the bottom of

14 page 16 where it talks of expenditures of the Rolla

15 Municipal Utilities. Do you see where I'm talking about?

16 A. Uh-huh.

17 Q. Is that correct? It helps if you say yes or

18 no for our court reporter.

19 A. Yes.

20 Q. On paragraph A, that basically says that it's

21 common practice for an entity such as RMU to transfer for

22 administrative expenses, is that correct, to the

23 municipality?

24 A. That is correct.

25 Q. Now, if we go to the top of page 17, that

1 paragraph reads, However, in addition to these transfers,  
2 the RMU has expended approximately 1.3 million during the  
3 past five fiscal years to promote economic or industrial  
4 development within the City of Rolla or pay general city  
5 expenses. Expenditures of this nature do not appear to be  
6 appropriate uses of municipal utility moneys. While Section  
7 349.012, RSMo 1994, provides a city with authority to expend  
8 city funds to promote economic or industrial development or  
9 for general city operations, RMU moneys are earned from the  
10 municipal utility and should be used only for that purpose.  
11 Is that correct?

12           A.       That's correct on it states what the State  
13 Auditor states, yes.

14           Q.       So basically, the State Auditor made a  
15 determination that RMU should not expend money for economic  
16 or industrial development directly?

17           A.       That's their opinion, yes.

18           Q.       Now, it goes on to say that in June of 1993 it  
19 found that RMU contributed 200,000 to the City toward the  
20 construction of a city recycling center; is that correct?

21           A.       Correct.

22           Q.       In February of 1994, RMU contributed 100,000  
23 to the City toward the purchase of the City's new police  
24 station; is that correct?

25           A.       Correct.

1           Q.       And then it goes on to say, It appears the  
2 City should have been responsible for these costs rather  
3 than RMU; is that correct?

4           A.       That's what they state, correct.

5           Q.       That's what the State Auditor states?

6           A.       Correct.

7           Q.       It goes on to say in June 1995, that RMU  
8 participated with the City in purchasing a building in which  
9 a private corporation subsequently located a new factory; is  
10 that correct?

11          A.       That's what the State Auditor states, correct.

12          Q.       This building was provided as an incentive to  
13 the private corporation to relocate in the Rolla area. The  
14 RMU contributed 775,000 toward the purchase of this  
15 building. That's a correct statement?

16          A.       That's a correct statement.

17          Q.       It goes on to say, In addition, the RMU has  
18 participated with the City in an economic development  
19 incentive program based on utility consumption. This  
20 program offers utility rebates to new industries within the  
21 City's enterprise zone. During the three years ended  
22 September 30th, 1997, the RMU reimbursed the City over  
23 250,000 related to utility rebates the City paid to  
24 businesses that qualified under this program.

25          A.       Correct.

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1 Q. Okay. And then it gets down to basically  
2 their conclusion. While the 1.3 million of expenditures  
3 noted above may be proper for certain city moneys, they do  
4 not appear appropriate for municipal utility moneys. As a  
5 result of this situation, utility rates and charges may be  
6 set higher than required to recover actual costs. Is that  
7 correct?

8 A. That's what they say, correct.

9 Q. That's what the State Auditor found; is that  
10 correct?

11 A. That's correct.

12 Q. And again, they confirmed it later on in the  
13 auditor's comment; is that correct?

14 A. Uh-huh. Correct.

15 Q. So in Mr. Priest's testimony where he says the  
16 State Auditor found that they should not do that, that is  
17 exactly what the State Auditor said; is that right?

18 A. He says the management recommendation that  
19 they should not, but there's no legal requirement that they  
20 do not. It's just a management recommendation. There's no  
21 legal requirement.

22 Q. Okay. Let's refer back over here to the  
23 auditor's comment. This is applying basically down through  
24 the same --

25 MR. DUFFY: Excuse me. What page are we on

1 now?

2 MR. DUNBAR: Page 19.

3 BY MR. DUNBAR:

4 Q. Page 16, 17, 18 and 19 all deal with  
5 expenditures of the Rolla Municipal Utilities; is that  
6 correct?

7 A. Correct.

8 Q. Okay. The auditor's comment states, The  
9 statutes in Chapter 91, RSMo cited in the board of public  
10 works' response do not support the board's assertions. In  
11 addition, these statutes do not apply to the City of Rolla.  
12 The board of public works' authority and power is limited in  
13 managing municipal utilities. Any expenditures of utility  
14 moneys for non-utility purposes translates into higher  
15 utility rates than necessary to operate and maintain the  
16 municipal utilities.

17 That was the final comment the auditor made;  
18 is that correct?

19 A. Correct.

20 Q. So, basically, the testimony that you were  
21 disagreeing with with regards to Mr. Priest is he basically  
22 just quoted from the auditor's report; is that right?

23 A. Am I quoting in my --

24 Q. No, Mr. Priest.

25 A. Yes.

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1 Q. He was basically just quoting what the State  
2 of Missouri's auditor had found; is that right?

3 A. Yes.

4 Q. Now, with regards to the rates, potential rate  
5 increase to the present customers that are located within  
6 annexed areas, I believe in your testimony you said that the  
7 reserve and available cash to the RMU was 8,362,000; is that  
8 correct?

9 A. Correct.

10 Q. And if you take the Intercounty's position  
11 that they would be owed 4.5 million, that would leave a  
12 reserve and available cash as of September 1999 available to  
13 RMU of 3,862,000; is that correct?

14 A. Correct.

15 Q. And on page 4 of your testimony, I believe you  
16 state that rates should not be increased if RMU is required  
17 to pay a fair amount; is that correct?

18 A. That's correct.

19 Q. And your determination of a fair amount would  
20 be closer to the -- closer to the sum that they would not  
21 have to pay more than a little over \$1.2 million; is that  
22 correct?

23 A. No. When I make that statement I say -- I'm  
24 talking about something that would bring their cash reserve  
25 down to zero.

1 Q. So you believe it would be prudent, if RMU  
2 needed to, to bring their cash reserve down to zero? That  
3 would be acceptable to you?

4 A. No. That would be an unfair. That's what I  
5 mean by unfair.

6 Q. I mean, RMU has to maintain a certain amount  
7 of percentages in reserve to anticipate necessary  
8 emergencies and those type things; is that correct?

9 A. Correct. And it's not just cash reserves;  
10 it's retained earning.

11 Q. I understand. Were you aware in the Plan of  
12 Intent that RMU had stated that they intended to expand  
13 their -- when they expanded into the annexed area, they were  
14 going to use their reserves to do that?

15 A. I'm not familiar with the Plan of Intent. I  
16 have not reviewed that.

17 Q. You have not reviewed the Plan of Intent; is  
18 that correct?

19 A. Correct.

20 MR. DUNBAR: I have no further questions.

21 JUDGE THOMPSON: Thank you, Mr. Dunbar.

22 Questions from the Bench, Chair Lumpe?

23 QUESTIONS BY CHAIR LUMPE:

24 Q. To clarify, Mr. Marmouget, and it's on the  
25 issue of the utility providing money to the City, do they

1 provide annually what was referred to as administrative  
2 costs and then moneys over and above that for these other  
3 projects or is that all considered administrative costs? In  
4 other words, is there an annual amount and you audit the --

5       A.       Yeah, there's an annual amount that RMU  
6 contributes for administrative costs.

7       Q.       All right.

8       A.       But that gets, I guess, negotiated throughout  
9 the year, is my understanding.

10      Q.       It's not a set fee?

11      A.       It's not a set fee that I'm aware of.

12      Q.       But then these other items that were mentioned  
13 were above and beyond those administrative costs, such as  
14 building a police station. That was not considered  
15 administrative cost. Then would you have seen that in the  
16 audits you performed?

17      A.       Yes.

18      Q.       Okay. And you -- and it wasn't line itemed as  
19 administrative costs?

20      A.       It was line itemed as a transfer to the City.

21      Q.       To do something with?

22      A.       And we don't specify in the audit as to what  
23 that money is to be used for. It's just a transfer.

24      Q.       And then the -- you make a statement, and I  
25 think I've heard you say it here, that there's nothing

1 inappropriate or illegal about this. Are you rendering a  
2 legal opinion or just your personal opinion based on  
3 information you know of other utilities and cities?

4 A. Just my opinion, Commissioner.

5 CHAIR LUMPE: Okay. I think that's all I  
6 have. Thank you.

7 JUDGE THOMPSON: Commissioner Murray?

8 COMMISSIONER MURRAY: I have no questions for  
9 this witness. Thank you.

10 JUDGE THOMPSON: Thank you, Commissioner.  
11 Commissioner Schemenauer?

12 COMMISSIONER SCHEMENAUER: Thank you, your  
13 Honor.

14 QUESTIONS BY COMMISSIONER SCHEMENAUER:

15 Q. Good morning, Mr. Marmouget.

16 A. Good morning.

17 Q. I have some questions, and I'd like you to  
18 answer them from an accountant's viewpoint, not an  
19 engineering or manager or legal viewpoint. Okay?

20 A. Okay.

21 Q. Just on the accounting side. Does RMU  
22 purchase or produce its electric power for their customers?

23 A. They purchase.

24 Q. And who do they purchase it from, if you know?

25 A. You may need to ask Mr. Watkins on that. I'm

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1 not sure offhand.

2 Q. Okay. And I think in your testimony you  
3 indicate that RMU can afford to pay Intercounty the four and  
4 a half million dollars it's asking for their assets?

5 A. No, I did not say that they could not afford  
6 to pay that.

7 Q. I'm asking you --

8 A. I'm sorry.

9 Q. You said they could afford to pay that because  
10 their cash assets are somewhat in excess of 8 million.  
11 Their current liabilities are 1.8 million. So they've got  
12 enough money to purchase that?

13 A. Correct.

14 Q. And then from an accounting viewpoint, how  
15 would they recover their investment?

16 A. They would recover their investment through  
17 the revenue that's generated from the purchase of that  
18 system. They would build up their cash reserve or the  
19 retained earnings balance by the income that's produced.

20 Q. Do you know how much income would be produced  
21 say, in the first, second, third year? It's in somebody's  
22 testimony.

23 A. No, I do not know that.

24 Q. Based on being an accountant, I think \$14,000  
25 gross revenue the first year, 242,000 the second year,

1 263,000 the third year, and it says gross revenue. So I  
2 guess that means that's not net revenue.

3 A. Correct. That's not net income.

4 Q. So net income to offset the purchase price  
5 would take quite a few years?

6 A. Yes, if you just look at the net income from  
7 the system in question, but RMU for year end September 30th,  
8 1999 had net income of 1.7 million; the year before of  
9 800,000. So the system taken as a whole would be able to  
10 replenish that reserve a lot quicker.

11 Q. So the current customers of RMU would  
12 subsidize this purchase; is that correct?

13 A. No, I would not say they were subsidizing it.  
14 I'm just referring to the reserves.

15 Q. But they --

16 A. The system itself should produce its own --  
17 I'm sorry.

18 Q. The income to replenish the reserves would  
19 come from the current customers?

20 A. Correct.

21 Q. On page 4 and 5 you make some statements  
22 regarding the statute and how it determines the price of the  
23 assets purchased. When you depreciate an asset, you put it  
24 on your books, do you include -- does the new cost include  
25 installation, testing, removal and disposition costs --



1           A.       Yes.

2           Q.       -- normally?

3                    Okay. Now, based on that depreciation formula

4 outlined in the statute where you would depreciate straight

5 line depreciation from new or replacement costs, if that

6 basis ended up being zero, would you say that was fair and

7 reasonable compensation the City should pay or RMU should

8 pay to Intercounty?

9           A.       The actual system itself, individual

10 transformers, whatever, could have very little value, but

11 the revenues that's generated from the system as a whole,

12 that's where the value would be.

13          Q.       I'm asking you, do you think it would be a

14 fair and reasonable compensation for RMU to pay to

15 Intercounty Electric Cooperative an amount of zero if that

16 is the book value that's determined by using the straight

17 line depreciation formula?

18          A.       That portion, Mr. Commissioner, yes.

19          Q.       So you think that would be a fair

20 compensation?

21          A.       On that portion of determining what the

22 compensation is, yes.

23          Q.       So you would say from an accounting standpoint

24 there's no value for some of those assets that have been

25 fully depreciated?

1           A.       Correct. But that doesn't include  
2 improvements.

3           Q.       And if the current book value were in excess  
4 of -- strike that.

5                    I want to understand you, though. If this  
6 formula according to the statute ended up with a zero basis,  
7 you think -- say for one particular asset, I'm not saying  
8 all of them, that zero should be the amount Rolla Municipal  
9 Utilities should pay to Intercounty Electrical for that  
10 asset even though it's still being used?

11          A.       No, not necessarily, because there's two parts  
12 to -- I believe there's two parts to what RMU would have to  
13 pay. What the asset is worth itself if they were to take a  
14 transformer down and try and sell it, it might not be worth  
15 anything, but when it's up on the pole, it's generating  
16 revenue. And that's why I believe the statute -- you have  
17 to consider the revenues that are being produced, not only  
18 just a depreciation portion.

19          Q.       So you think part of the price of the assets  
20 is that 400 percent revenue replacement?

21          A.       Correct.

22          Q.       And that's part of the cost of those assets?

23          A.       Well, it's part of the --

24          Q.       It's parts of the revenue that's produced, but  
25 you're saying that would compensate Intercounty or

1 Intercounty Electrical Coop for any differences in market  
2 value versus book value that was arrived at?

3 A. No. It would not compensate for any  
4 difference between market value and book value, no.

5 Q. Okay. How does Intercounty Electrical Coop  
6 recover any market value, then, the difference between  
7 market value and whatever the book value is?

8 A. I'm not sure how that would be determined,  
9 Commissioner.

10 Q. Under the statute, under 5, subparagraph 5, it  
11 lists other cost reasonably incurred by the affected  
12 electrical supplier in connection with a transaction. Could  
13 that include any differences in market value versus what  
14 this formula showed up?

15 A. I guess my opinion would be, since the  
16 straight line depreciation says you have to use historical  
17 cost, the statute said you're not to use historical cost,  
18 you're going to use what it would cost new to build today,  
19 and in that aspect that could be a compensation of what  
20 you're talking about.

21 Q. Well, is that -- if something cost new today  
22 \$100,000, okay, and the life was 25 years and it was  
23 purchased in 1970, what would the value of that be today?

24 A. I'm sorry. Can you restate your question?

25 Q. The asset costs \$100,000 new today, but the

1 asset, this asset was put in service in 1970 with a 25-year  
2 life. What would the value according to the statute be  
3 today?

4 A. Zero.

5 Q. And that would be a fair and reasonable price  
6 for RMU to pay to Intercounty Electrical?

7 A. On that asset?

8 Q. Yes.

9 A. If you tried to sell it and it's not worth  
10 anything individually, then I would say yes.

11 Q. I mean, we're not -- I mean, there's an  
12 intangible value because it's part of an entire system, and  
13 you would just disregard that intangible probably?

14 A. Yes, I would.

15 COMMISSIONER SCHEMENAUER: I think that's all  
16 I have. Thank you.

17 JUDGE THOMPSON: Commissioner Simmons?

18 COMMISSIONER SIMMONS: Yes. Thank you, your  
19 Honor.

20 QUESTIONS BY COMMISSIONER SIMMONS:

21 Q. Good morning, Mr. Marmouget. It's still  
22 morning. I have a lot of questions that I would like to ask  
23 you, and I think that Mr. Comley and Mr. Dunbar and even  
24 Chair Lumpe have gone down the same road. So I have some  
25 questions, and some of those may be clarification questions.

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1                   These questions are in response to your  
2 testimony, I guess it's page 2, line 12. And you talk about  
3 Mr. Priest's rebuttal testimony, and I'd like to ask you,  
4 first of all, can you explain the difference between the  
5 administrative costs and costs that RMU may incur versus  
6 that money that they may transfer into the general fund? Is  
7 there a difference there?

8           A.       Well, there's an administrative cost that RMU  
9 agrees to transfer to the City of Rolla, and -- but there  
10 could be additional transfers that take place during the  
11 year. It's very common throughout all municipalities to  
12 transfer money from the utilities to the general fund of the  
13 city, and it varies from year to year.

14                   Either the transfers that are made to the City  
15 of Rolla could be looked at as additional administrative  
16 costs or they -- but when the City actually goes to spend  
17 it, it might spend it on, say, an economic development type  
18 of thing. So there's a connection that's trying to be made  
19 there.

20           Q.       Now, is this a situation whereby city council  
21 by way of policy would either then say the money that comes  
22 in goes into a designated project or a fund that they deem  
23 as something in the City's interests versus RMU saying, We  
24 are specifically designating this money to this fund?

25           A.       Right. The City, when RMU gives them the

1 money for administrative costs, and that varies from year to  
2 year in the exact amount, the City will designate that money  
3 when it comes in for specific projects.

4 Q. So I guess as it relates to that, when we talk  
5 about money being transferred for economic development  
6 purposes, is this something that RMU has identified that  
7 they're going to give money to, or is this something that  
8 the city council as the body for the City of Rolla has  
9 designated as something that we deem is a good purpose  
10 versus specifically for economic development purposes?

11 A. I guess what I look at is the city council  
12 decides what to spend the money on, and then they ask for  
13 additional transfer from the utility.

14 Q. So it is something that the council has  
15 adopted pretty much as its policy?

16 A. (Witness nodded.)

17 COMMISSIONER SIMMONS: Okay. I think that's  
18 all the questions I have on that issue. Thank you. Thank  
19 you, sir.

20 JUDGE THOMPSON: Thank you, Commissioner  
21 Simmons.

22 QUESTIONS BY JUDGE THOMPSON:

23 Q. What exactly was the problem with the age of  
24 the assets, Mr. Marmouget, that was referred to during  
25 cross-examination?

1           A.       When I was referring to rate of population  
2 growth and inflation or --

3           Q.       No. I think when Mr. Frey cross-examined you,  
4 he asked you to agree that the depreciation was a difficult  
5 thing to do in this case, that there was little or no  
6 information with respect to asset age. Could you explain  
7 that to me?

8           A.       Yes. For example, RMU when they buy poles,  
9 they buy transformers, it goes into an inventory, and then  
10 those items are taken out of inventory and placed into the  
11 system. And at that time it's placed into the system,  
12 that's when it gets capitalized as a fixed asset and  
13 depreciated.

14          Q.       Okay.

15          A.       It would be very difficult -- not very  
16 difficult, but it would be difficult if you tried to go back  
17 and find the age of each pole, each transformer, each wire,  
18 but it wouldn't -- but it wouldn't be difficult to find out  
19 when those items were placed into the system as an asset  
20 addition.

21                   But if you tried to go back for every pole,  
22 then yes, it would be difficult. But that's not how the  
23 assets are capitalized. It's capitalized together as an  
24 addition to the system or the system together when it first  
25 goes in.

1 Q. Is that the way that Intercounty capitalized  
2 them?

3 A. I'm not familiar with how they keep their  
4 fixed asset records, but that's how most businesses and  
5 municipal governments and every audit that I've been  
6 involved with, that's how they do it.

7 Q. Okay. And secondly, the statutory language,  
8 present day reproduction costs new, what does that mean to  
9 you?

10 A. It means they're trying to compensate for any  
11 improvements, any additions to the system. I guess I'm not  
12 sure what the statute's trying to require. I'm not a  
13 lawyer, but that's just my --

14 Q. You're an accountant, correct?

15 A. Yes.

16 Q. And you do depreciation every day, do you not?

17 A. Yes.

18 Q. So looking at this language that the statute  
19 contains, how would you go about doing that? Pardon me a  
20 moment.

21 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

22 BY JUDGE THOMPSON:

23 Q. Back to my question, Mr. Marmouget, as an  
24 accountant, let's say that you are given the task of  
25 calculating this depreciation to meet the recipe that the



1 statute sets out. What number would you take as present day  
2 reproduction costs new?

3 A. Whatever it would cost to put that system in  
4 today.

5 Q. Okay. So that number of poles, that number of  
6 transformers, that number of miles of cable of a certain  
7 type, right?

8 A. Right.

9 Q. You would take the present day cost of those  
10 things?

11 A. That's correct.

12 Q. Okay. Very good. Did you provide  
13 consultation to the City of Rolla in developing the number  
14 that it has proposed?

15 A. No, I did not.

16 Q. Okay. Now, you've given your opinion that the  
17 transfers that the State Auditor did not like, that there  
18 was nothing illegal with respect to those?

19 A. Not that I'm aware of.

20 Q. Okay. And you do audit RMU; is that correct?

21 A. That's correct.

22 Q. So in the course of your auditing, you were  
23 aware of those transfers?

24 A. That's correct.

25 Q. And you found nothing improper with them?

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1           A.       That's correct.

2           Q.       What exactly is the structure of RMU? Is it  
3 operated as a department of city government?

4           A.       In accounting terms it's what we call a  
5 component unit. It is a part of the City because the City,  
6 if I'm correct, designates the board. It is ultimately  
7 responsible for any debt. So under those circumstances it's  
8 a component unit of the City.

9           Q.       But it has a separate board?

10          A.       That's correct.

11          Q.       And who appoints that board?

12          A.       I believe city council does, if I'm not  
13 mistaken.

14          Q.       Thank you very much.

15                   JUDGE THOMPSON: Any further questions from  
16 the Bench?

17                   Recross based on questions from the Bench,  
18 Mr. Frey?

19                   MR. FREY: No questions.

20                   JUDGE THOMPSON: Public Counsel?

21                   MS. O'NEILL: No, your Honor.

22                   JUDGE THOMPSON: Mr. Comley?

23                   MR. COMLEY: No questions. Thank you.

24                   JUDGE THOMPSON: Mr. Dunbar?

25                   MR. DUNBAR: No questions.

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1 JUDGE THOMPSON: Mr. Duffy, redirect?

2 MR. DUFFY: Thank you. I have a few.

3 REDIRECT EXAMINATION BY MR. DUFFY:

4 Q. Mr. Marmouget, you were asked a question, I

5 believe, by Mr. Comley about the new wholesale purchase

6 power agreement and what effect, if any, that would have on

7 rates. Do you remember that question?

8 A. Yes, I do.

9 Q. Did you testify that you did review this new

10 wholesale purchase power agreement? You looked at it?

11 A. No, I did not.

12 Q. You have not looked at the document? Let me

13 start over again. Have you looked at the new wholesale

14 purchase power agreement that kicks in January 1, 2001?

15 A. No, I have not.

16 Q. Have you had any discussions about it with

17 anyone at RMU?

18 A. Yes, some limited discussions on it.

19 Q. Do you believe you have an understanding of

20 how it operates or what its impact is?

21 A. Somewhat, yes.

22 Q. Have you been led to believe that it will have

23 a significant impact one way or the other on RMU's cost of

24 power?

25 A. No, it would not.

1 Q. How do you know that?

2 A. Just with discussion with RMU personnel and  
3 why they went this route, I guess, and the structure of  
4 power costs. I mean, if there's a -- if there's a big fuel  
5 rate increase that is going to force fuel prices up, it's  
6 going to affect everybody.

7 I don't see -- I don't know offhand if this  
8 one particular agreement is going to affect RMU. I believe  
9 they did this because it was a better cost or potential cost  
10 savings.

11 Q. Mr. Comley took you through some examples over  
12 here on the board, which I can't see and I don't know what  
13 it looks like, but did those examples demonstrate present  
14 day reproduction costs new less depreciation computed on a  
15 straight line basis?

16 A. No. Those were historical costs computed on a  
17 straight line basis.

18 Q. I believe you -- or you've touched on this in  
19 your previous responses, but let me just ask it this way.  
20 Do you believe that the use of reproduction costs new as a  
21 component eliminates the need to look at specific  
22 improvements to the facilities over time?

23 A. Yes. That is my opinion that's why it's in  
24 the statute, but again, that's -- I'm not rendering a legal  
25 opinion. It's just my professional opinion.

1           Q.       You used the term population growth several  
2 times. Are you talking about population of the city or are  
3 you talking about something else when you talk about  
4 population growth?

5           A.       What happens is, when you use Mr. Ledbetter's  
6 method of calculating depreciation it skews it, because as  
7 the rate of population growth goes up in a city or rural  
8 district or anywhere, the tendency is that the rate of  
9 population growth goes up exponentially.

10                   And when that happens, new lines, new systems  
11 have to go into that system, which makes that total fixed  
12 asset number larger, much larger than, say, back in 1970.

13                   So if you do an average, it's going to be  
14 skewed because there's a lot more assets that went in in the  
15 last ten years that went in from, let's say, 19-- let me  
16 rephrase it. From 1990 to 2000 the costs and the additions  
17 are a lot more than say for '70 to '80.

18           Q.       So you weren't using the term as a specific  
19 depreciation type term to refer to the population growth of  
20 assets; you were using it in a general sense?

21           A.       Correct.

22           Q.       You were asked some questions or several  
23 questions about the State Auditor's report which criticized,  
24 or I guess in your terms it made a management recommendation  
25 to do something different.

1                   Based on your experience with audits, if the  
2 State Auditor had found a violation of the law, would they  
3 have said something differently in their report than make  
4 management recommendations?

5           A.       Yes. I mean, it would be a violation of law  
6 and whatever consequences that would result because of that.  
7 But it's very common for the State Auditors to go in, if  
8 they don't find anything, just issue a report and say, We  
9 didn't find anything, but that never happens. They go in  
10 and they charge the city so much money, they've got to come  
11 up with -- it's usually the practice to try to come up with  
12 some kind of recommendations to improve city efficiencies or  
13 whatever.

14                   Just like we do when we go in and audit a  
15 city, we go in and we try to find recommendations to try and  
16 help them improve the city. And that's what the State  
17 Auditor does, and that's why they make these  
18 recommendations.

19           Q.       Would you characterize the recommendations  
20 they made with regard to these transfers as just bookkeeping  
21 recommendations, form over substance, or are they something  
22 different?

23           A.       These recommend-- they're just -- these are  
24 just recommending that the city council and the board of RMU  
25 look at those transfers and see if that's something that the

1 City and RMU should do.

2 Q. I believe we've established that the statutory  
3 language says reproduction costs new less depreciation on a  
4 straight line basis. I may not be quoting exactly, but is  
5 that the general concept?

6 A. Yes.

7 Q. Now, that's not the only way that you can  
8 value an asset, is it?

9 A. No.

10 Q. Could the General Assembly have used the  
11 phrase market value instead of reproduction costs new less  
12 straight line depreciation?

13 A. Yes.

14 MR. COMLEY: Objection. I think it would be  
15 highly speculative for this witness to talk about what the  
16 General Assembly may or may not have done.

17 MR. DUFFY: Well, I asked him if they could  
18 have done that.

19 JUDGE THOMPSON: The objection is overruled.  
20 Please proceed.

21 THE WITNESS: Yes, they could have used lots  
22 of different ways. They could have -- in accounting terms,  
23 instead of using straight line basis, they could have used  
24 double declining balance method. They could have used sum  
25 of year digit or they could have used market value. There's

1 a lot of variations that they could have used, but they  
2 chose to put in the terminology straight line basis.

3 BY MR. DUFFY:

4 Q. After reproduction costs new?

5 A. After reproduction costs new, correct.

6 Q. Could reproduction costs new be greater or  
7 less than market value?

8 A. Yes. I'm sorry. Could you repeat that  
9 question?

10 Q. Could reproduction costs new be either greater  
11 or less than market value in a given instance?

12 A. Yes.

13 Q. You were asked questions about useful life,  
14 and I guess what I want to know is, who determines what the  
15 useful life of a particular asset is in the business that  
16 you do?

17 A. The management of the business or city or  
18 whoever we're auditing, they determine that. And when we  
19 audit it, we look at whether or not that's reasonable.

20 Q. So if the City of Rolla said that the useful  
21 life of a wooden pole was 150 years, you'd have the ability  
22 to say, No, we don't like that. You ought to use something  
23 different?

24 A. Correct. Because when we do an audit, we look  
25 to see whether or not they are stating their financial



1 statements in accordance with Generally Accepted Accounting  
2 Principles, and a straight line basis has estimated useful  
3 life. If that wasn't the estimated useful life, then their  
4 financial statements would not be presented in accordance  
5 with Generally Accepted Accounting Principles.

6 Q. Is it your understanding that the type of  
7 equipment that the distribution facilities, and I'll say  
8 those are poles, conductors, transformers, guide wires, that  
9 the type of things that are at issue in this case, is it  
10 your understanding that Intercounty on its books or in the  
11 reports it makes to whoever it reports to depreciates those  
12 facilities at roughly 2.8 percent per year?

13 A. Yes, they do. In both their audited financial  
14 statements on their Rural Utility Service Form 7 that they  
15 submit to RUS prepared under RUS regulations, their  
16 depreciation rate is the straight line rate of 2.8 percent  
17 on the distribution system.

18 Q. But they do depreciation differently on other  
19 things like line trucks, for example?

20 A. Correct. Vehicles, I believe, if I remember  
21 correctly, was 10 percent. There's some sort of  
22 transportation equipment at 16.6 percent. There's an item  
23 called power-operated equipment that was depreciated at  
24 2 percent, and that's common. That's how it is with all  
25 businesses. As different types of assets are depreciated,

1 that they know what their useful life is.

2           Q.       Was part of the concern you had with  
3 Mr. Ledbetter's testimony that you gave in response to some  
4 of the questions on cross that his approach mixed in some of  
5 these higher depreciation rates so that -- so that, in  
6 essence, it wouldn't be as if Rolla was just purchasing  
7 lines, poles and transformers, it's also purchasing trucks  
8 and computers and other things?

9           A.       That's correct, because in his calculation he  
10 took all the assets of Intercounty, not just the electrical  
11 distribution, but all the assets of Intercounty Electric,  
12 subtracted the accumulated depreciation and divided that  
13 number by the total assets in order to get a rate. So he  
14 included all these different depreciation factors.

15          Q.       To your knowledge, is Rolla Municipal  
16 Utilities proposing to acquire anything other than just  
17 distribution facilities that would come under this  
18 2.8 percent rate in this transaction?

19          A.       No.

20          Q.       Was it your testimony that Rolla maintains  
21 continuing property records on its distribution assets?

22          A.       Yes.

23          Q.       Have you ever seen any continuing property  
24 records from Intercounty with regard to its distribution  
25 assets in the Southside annexation area?

1           A.       I think I've seen staking sheets, and I assume  
2 there's some sort of record because they are calculating  
3 depreciation at 2.8 percent in their audited financial  
4 statements, which would mean they'd have to have some sort  
5 of continuing property record.

6           Q.       To your knowledge, did Intercounty ever  
7 provide to Rolla the original dates of installation of  
8 anything on those staking sheets?

9           A.       Not to my knowledge.

10          Q.       Would Mr. Bourne know more about that than you  
11 would?

12          A.       Probably, yes.

13          Q.       You were asked some questions by Commissioner  
14 Schemenauer the gist of which I understood it to be that he  
15 was concerned that if the reproduction costs new less  
16 depreciation on a straight line basis meant that the asset  
17 was worth zero, that perhaps that wasn't fair and  
18 reasonable. And I think you said something to the effect  
19 that, well, you have to take into account the 400 percent.

20                   How does the 400 percent of gross revenue  
21 compensate or affect the fact that there might be a  
22 particular asset valued at zero?

23          A.       Because the system as a whole generates  
24 revenue. That is a value of that system, and that is a  
25 compensation provided under the statute for that. So that

1 is a value of the system.

2                   And then there is also the value, I believe  
3 the term used market value of the system. The market value  
4 could be zero or very little, but as a whole there could  
5 still be a value there, and that's where the 400 percent of  
6 revenues is found. I believe that's my opinion why that's  
7 in there, because the system as a whole could still have a  
8 value.

9           Q.       Do you think the General -- the General  
10 Assembly used 400 percent. Could the General Assembly have  
11 used some other number than 400 percent?

12                   MR. COMLEY: I'm going to object again. I  
13 think asking what the General Assembly could have done is  
14 highly speculative for this witness.

15                   JUDGE THOMPSON: Mr. Duffy?

16                   MR. DUFFY: I'm asking him if that's the only  
17 number that could be used, and then we can explore -- if it  
18 is, we can explore why. If it isn't, we can explore that.  
19 I think it's relevant to determining why the Commission --  
20 excuse me -- why the General Assembly did what it did.

21                   JUDGE THOMPSON: Objection is overruled.  
22 Please proceed.

23 BY MR. DUFFY:

24           Q.       Do you want me to restate the question?

25           A.       Yes, please.

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1           Q.       I think the question was, could the General  
2 Assembly have used some number other than 400 percent of  
3 gross revenue as a part of this provision?

4           A.       Yes.

5           Q.       To your knowledge, is there anything in the  
6 accounting world that makes 400 percent something that is  
7 appropriate or necessary or required?

8           A.       No.

9           Q.       So the General Assembly could have said  
10 500 percent or 800 percent or 2 percent? They could have  
11 picked whatever they thought was reasonable, is that your  
12 opinion?

13                   MR. DANDINO: Judge, let me offer a continuing  
14 objection to whatever the General Assembly could or could  
15 not have done with respect to this statute. I think that  
16 that is inappropriate for a witness to answer what the  
17 General Assembly intended to do or did not intend to do or  
18 could have done but didn't do.

19                   JUDGE THOMPSON: Thank you, Mr. Comley. You  
20 can have a continuing objection. Please proceed.

21 BY MR. DUFFY:

22           Q.       Go ahead and state your answer to that.

23           A.       Yes, they could have used anything.

24           Q.       So there's nothing in the accounting world  
25 that --

1           A.       There's nothing under Generally Accepted  
2 Accounting Principles that states that this is how this is  
3 to be calculated.

4           MR. DUFFY:   That's all the questions I have on  
5 redirect, your Honor.

6           JUDGE THOMPSON:   Thank you, Mr. Duffy.

7           We will break for lunch at this time.   We'll  
8 see everybody back at one o'clock for the next witness.

9           (THE NOON RECESS WAS TAKEN.)

10          JUDGE THOMPSON:   Mr. Duffy, your second  
11 witness.

12          MR. DUFFY:   I assume we're through with  
13 Mr. Marmouget.

14          JUDGE THOMPSON:   Does anyone anticipate any  
15 further need for Mr. Marmouget?

16          MR. COMLEY:   None, your Honor.

17          JUDGE THOMPSON:   You're excused, sir.   Thank  
18 you.

19          MR. DUFFY:   I call Mr. Rodney Bourne to the  
20 stand, your Honor.   And as I previously indicated -- we're  
21 off the record, right?

22          JUDGE THOMPSON:   No.   We can proceed on the  
23 record.

24          MR. DUFFY:   As I previously indicated, I  
25 believe we filed some errata sheets to Mr. Bourne's

1 testimony the other day, and so I'm prepared to give the  
2 court reporter three copies of those if we need to mark  
3 those as exhibits.

4 JUDGE THOMPSON: Okay. Exhibit No. 19.

5 (EXHIBIT NO. 19 WAS MARKED FOR IDENTIFICATION  
6 BY THE REPORTER.)

7 JUDGE THOMPSON: Do you have copies of those  
8 for me and the Commissioners?

9 MR. DUFFY: We filed an original and eight  
10 when we filed those, your Honor. So you should have those.

11 (Witness sworn.)

12 JUDGE THOMPSON: Please be seated. Spell your  
13 name for the reporter, if you would.

14 THE WITNESS: It's Rodney, R-o-d-n-e-y, last  
15 name is Bourne, B-o-u-r-n-e.

16 JUDGE THOMPSON: Please proceed, Mr. Duffy.

17 MR. DUFFY: Thank you.

18 RODNEY BOURNE testified as follows:

19 DIRECT EXAMINATION BY MR. DUFFY:

20 Q. Would you state your name for the record,  
21 please.

22 A. Rodney Bourne.

23 Q. Are you the same Rodney Bourne that caused to  
24 be filed what's been marked for purposes of identification  
25 as Exhibit 3NP, prepared direct testimony of Rodney Bourne,

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1 Exhibit 3P, prepared direct testimony of Rodney Bourne in  
2 proprietary form, and what's been marked for purposes of  
3 identification as Exhibit No. 4, prepared surrebuttal  
4 testimony of Rodney Bourne?

5 A. Yes.

6 Q. Are you also familiar with what's been marked  
7 for purposes of identification as Exhibit 19, which consists  
8 of a few errata sheets to the surrebuttal testimony?

9 A. Yes.

10 Q. First of all let me ask you, do you have any  
11 changes or corrections to your prepared direct testimony?

12 A. The only thing I'd make is a general statement  
13 that the direct testimony that I filed was filed on  
14 May 31st, 2000.

15 Since then Intercounty's filed rebuttal  
16 testimony, and I've since filed surrebuttal testimony.  
17 Because of issues raised with Intercounty's rebuttal  
18 testimony, there are things that may or may not apply  
19 anymore in my direct testimony and that are now addressed in  
20 my surrebuttal testimony.

21 So if there's any questions with regards to  
22 any confusion that it causes, I'd be happy to answer them  
23 now. I didn't deem it necessary to go back and go in line  
24 for line and change my direct testimony. I think it's  
25 pretty obvious the changes in position that are now



1 represented in the surrebuttal testimony supersede those in  
2 the direct.

3           Q.       With regard to your surrebuttal testimony, do  
4 you have any changes to that other than what is already  
5 shown in what's been marked as Exhibit 19 where the numbers  
6 were changed in various locations?

7           A.       No.

8           Q.       If I asked you the same questions that appear  
9 today in Exhibit 3NP, 3P, 4 and the changes that are  
10 reflected in Exhibit 19, would your answers be the same as  
11 reflected in those documents?

12          A.       Yes.

13          Q.       Are those answers true and correct to the best  
14 of your knowledge, information and belief?

15          A.       Yes.

16                   MR. DUFFY: Your Honor, at this time I would  
17 offer Exhibits 3P, 3NP, 4 and 19 into evidence.

18                   JUDGE THOMPSON: Okay. Do I hear any  
19 objections to the receipt of Exhibits 3, 4 or 19?

20                   MR. COMLEY: Your Honor, with respect to  
21 Exhibit 4, Mr. Bourne's surrebuttal, Intercounty has two  
22 objections.

23                   JUDGE THOMPSON: Okay.

24                   MR. COMLEY: On page 11, at line 14,  
25 Mr. Bourne makes a statement about another witness'

1 testimony. That is pure speculation on his part. He has no  
2 facts to back it up. I object to that comment because it's  
3 a comment about the credibility of another witness. It's  
4 argumentative. And when Mr. Bourne believes that the  
5 witness' testimony is speculative or not is not relevant to  
6 the case. It's a matter for the Commission to decide. I  
7 move that it be stricken.

8 JUDGE THOMPSON: Mr. Duffy?

9 MR. DUFFY: I think this is fair comment.  
10 This is surrebuttal testimony. He's specifically responding  
11 to an assertion made by a witness of Intercounty in  
12 rebuttal, and he's saying that it's speculation, that there  
13 are no facts to support it. So I think it's appropriate  
14 surrebuttal testimony, and I would resist the motion to  
15 strike.

16 JUDGE THOMPSON: I'm going to strike line 14  
17 and 15 from page 11. This is Exhibit No. 4.

18 MR. DUFFY: Your Honor, I request that they  
19 nevertheless be preserved in the record pursuant to  
20 Chapter 536.

21 JUDGE THOMPSON: Granted.

22 MR. COMLEY: Your Honor, another objection we  
23 had to Mr. Bourne's testimony is at page -- starts at  
24 page 22. On pages 22 through 26, Mr. Bourne describes a  
25 method of data gathering which apparently took him to an

1 office of the county assessor. He located 197 properties  
2 within the area and then looked at dates of construction,  
3 et cetera. Using these records, he summarized them and then  
4 made conclusions about the ages of the facilities that are  
5 subject to this action.

6 I object on the grounds that it is the  
7 improper use of a summary. In order for a summary like this  
8 to be admitted into evidence, we first need to know that the  
9 records upon which Mr. Bourne was making his analysis were  
10 admissible here, and the other thing was that they would  
11 need to be available for inspection in court today.

12 A case that I'd cite to the Commission about  
13 this is Siegreest vs. Clark 935 SW2d 350. It discusses how  
14 the use of summaries of voluminous records can be helpful to  
15 the court, but it also sets out restrictions on their use.

16 I'd quote from the case on page 355, Generally  
17 an summary of records is admissible where the records upon  
18 which the summary is based are voluminous, are admissible  
19 and are available to the opposing party for inspection.

20 Mr. Bourne did not attach the documents to his  
21 testimony. Neither have they been made available to  
22 Intercounty for review in this case today.

23 JUDGE THOMPSON: Mr. Duffy?

24 MR. DUFFY: Well, I would observe that this  
25 should have been a written motion since this testimony was

1 filed October 18th and that Mr. Comley presumably could have  
2 filed this as a written motion and cited this case law,  
3 which I've never seen before or am not aware of at this  
4 point.

5                   And I can try to -- I'll be glad to try to  
6 respond to it orally. I guess my off the top of my head  
7 response would be that I don't know what that case says. I  
8 don't know whether it applies to administrative proceedings  
9 before the Public Service Commission.

10                   My recollection is that there's something in  
11 536 about the use of summaries, that an expert witness can  
12 rely upon summaries of data and that he can be  
13 cross-examined on those things, and that, in any event, all  
14 of this would go to the weight to be accorded this evidence  
15 and not to its admissibility.

16                   Mr. Comley complains that Mr. Bourne did not  
17 attach any of these supporting records to his testimony.  
18 Well, as you know, in Commission practice, and as  
19 Intercounty has freely utilized, you can ask Data Requests,  
20 and to my knowledge they've never asked us a Data Request to  
21 produce this information. So they've just waited 'til the  
22 last minute to try this legal maneuver.

23                   So I would say that Mr. Comley's objection  
24 should be overruled.

25                   JUDGE THOMPSON: Thank you, Mr. Duffy. I'm

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1 going to take this objection with the case. So I would urge  
2 you to address it in your Briefs. Thank you. Let's  
3 proceed. Any other objections to the tendered Exhibits 3, 4  
4 and 19?

5 (No response.)

6 Exhibits No. 3 and 19 are received and made a  
7 part of the record of this proceeding. Exhibit No. 4 is  
8 received subject to the objection that is pending as to  
9 pages 23 through 27. Is that correct, Mr. Comley?

10 MR. COMLEY: It would go from line 12 of  
11 page 22 to line 8 of page 26.

12 JUDGE THOMPSON: Okay. The portion Mr. Comley  
13 just designated, line 12 of page 22 through line 8 of page  
14 26 is received subject to -- actually, your objection as to  
15 that section is taken under advisement and will be addressed  
16 in the Report and Order.

17 (EXHIBIT NOS. 3, 4 AND 19 WERE RECEIVED INTO  
18 EVIDENCE.)

19 MR. DUFFY: Just so I'm clear, I'm under no  
20 obligation at this point to respond to his objection in ten  
21 days, but I am encouraged to respond to his objection in the  
22 Briefs?

23 JUDGE THOMPSON: Yes, sir.

24 MR. DUFFY: Thank you.

25 JUDGE THOMPSON: Please proceed with your

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1 direct, or you're done now. Cross-examination, Mr. Frey?

2 MR. FREY: Thank you, your Honor.

3 CROSS-EXAMINATION BY MR. FREY:

4 Q. Good afternoon, Mr. Bourne.

5 A. Good afternoon.

6 Q. I have just a few questions for you. On

7 page 5 of your surrebuttal testimony, I believe you suggest

8 that facilities should be depreciated based on the original

9 date of installation, is that correct, or is that your

10 position?

11 A. On what line are you on?

12 Q. Well, I refer to on page 5, specifically to a

13 criticism of Mr. Ketter up on line 1 there. I think that

14 suggests, does it not, that the depreciation should be based

15 on the original date of installation?

16 A. Yes.

17 Q. Okay. And can you tell me, then, what

18 provision --

19 A. Just a second. Could you ask that question

20 again? I want to make sure I understood it completely.

21 Q. Okay. Should facilities be depreciated on the

22 basis of the original date of installation?

23 A. My answer would be yes.

24 Q. Okay. Now, what provisions are there in this

25 analysis for additions or, let's say, improvements that

1 could have been done over the time since the original  
2 installation?

3           A.       I think the statute the way I read it is  
4 you're to calculate the present day reproduction cost. So  
5 any changes or modifications or improvements would all be  
6 rolled up into a reproduction cost new because you -- if you  
7 added lines or made other types of improvements, when you  
8 calculate your present day reproduction costs, you've got  
9 all those things.

10          Q.       So you're saying that the mechanism of using  
11 the present day reproduction cost picks up this problem?

12          A.       That's correct.

13          Q.       Let's just take a pole. If it were to be  
14 installed -- that's not a good example. That's take another  
15 asset, perhaps a transformer, an asset that is subject to  
16 capital improvement. If it were to be installed, let's say  
17 it was installed in 1960 and let's say religiously, whatever  
18 asset we're talking about, it always dies after 35 years.  
19 And then we do a capital improvement on it and all of a  
20 sudden we get to year 35 and it's not dead but it looks like  
21 it says maybe another 10 or 15 years of life left on it.

22                   Under your analysis and theory, at the end of  
23 year 35 would not the value to be attributed to that asset  
24 be zero?

25          A.       I believe that's correct.

1 Q. On another matter, on page 26, line 12, and I  
2 haven't indicated it, but I think it's your surrebuttal  
3 testimony, I just want to make sure we're clear on this.  
4 RMU has adopted the route suggested by Intercounty witness  
5 Mr. Ledbetter re integration of Intercounty Electric  
6 facilities. Do I have that right?

7 A. Yeah. We've agreed to the general intent that  
8 Mr. Ledbetter had of the proposed routes that he suggested,  
9 I think, with some minor changes to them as far as conductor  
10 size, right of way clearings, some other minor things.

11 Q. Is it also true that maybe there's a bit of an  
12 agreement as to the length?

13 A. I think over on page 27, line 3 of my  
14 testimony, Mr. Ledbetter in his -- Exhibit JEL-3 of his  
15 testimony, he describes a section of line one mile long of  
16 three-phase one aught conductor. I believe this line was  
17 located on South Rolla Street, south of the annexed area.  
18 I personally inspected the route Mr. Ledbetter  
19 planned on using and the length of conductor that would be  
20 required, and the actual distance that I measured was more a  
21 half a mile, as I reflect in my testimony, instead of one  
22 mile.

23 Q. So the overall number as I recall was eight a  
24 and half miles was your number and nine was Intercounty's;  
25 is that correct?



1           A.       I'd have to check.

2           Q.       That's okay.

3           A.       But I believe Mr. --

4           Q.       There's a half a mile discrepancy?

5           A.       Half a mile discrepancy, that's correct.

6           Q.       Is it your opinion, then, that this option

7 would minimize the duplication of facilities of RMU and

8 Intercounty?

9           A.       I believe that's correct.

10          Q.       And are these line segments that reintegrate

11 Intercounty's electric facilities identified accurately

12 enough to seek competitive bids?

13          A.       Using the maps that Intercounty provided, I

14 believe that could be done.

15          Q.       Mr. Bourne, were you responsible -- or perhaps

16 responsible isn't the correct word, but were you charged

17 with coming up with a date by which you would measure or at

18 the end of which or on which you would measure the amount of

19 depreciation on these assets?

20          A.       I believe that's part of my testimony, yes.

21          Q.       And that date was sometime in year 2001; is

22 that correct?

23          A.       I believe that's correct also.

24          Q.       What date was it?

25          A.       Give me a second. I'll see if I can find it.

1 Q. Was it not the estimated transfer date?

2 A. I believe that's correct, and I haven't found  
3 it in my testimony, but I believe we're assuming some  
4 transfer taking place in March of 2001.

5 Q. And just as a practical matter, I don't know  
6 if you can answer this, but how do you see that  
7 recommendation playing out with regard to an ultimate  
8 Commission Order in this case in the event that the transfer  
9 is ordered with compensation?

10 A. I'm not sure I understand your question.

11 Q. Well, I mean, I guess what I'm asking is, do  
12 you see the Commission making the Order contingent upon that  
13 or whatever date or setting an arbitrary transfer date or  
14 for purposes of its determination as to fair and reasonable  
15 compensation, or have you given it any thought?

16 A. Well, I think ultimately the Commission is the  
17 body that's going to have to decide if the data I've used of  
18 March of 2001 or sometime in the year 2001 or the date that  
19 Staff has chosen of the annexation date of '98 or any other  
20 date that may come up in this proceeding, I think ultimately  
21 the Commission is going to have to determine which is the  
22 correct date to use and I think make a basis for  
23 depreciation from that date.

24 MR. FREY: No further questions, your Honor.

25 Thanks, Mr. Bourne.

1 JUDGE THOMPSON: Thank you, Mr. Frey.  
2 Ms. O'Neill?  
3 CROSS-EXAMINATION BY MS. O'NEILL:  
4 Q. Mr. Bourne, just to follow up on Mr. Frey's  
5 question, did you consider using the annexation date in  
6 doing your depreciation calculations?  
7 A. I did not.  
8 Q. Was there any discussion with you and anyone  
9 at RMU regarding using that as the date?  
10 A. I think there was discussion of what would be  
11 appropriate, and the number we chose was 2001 when the day  
12 the transfer would take place.  
13 Q. At that time that you made that decision, did  
14 you know whether any other parties were going to choose a  
15 different date?  
16 A. I don't believe so.  
17 Q. After receiving information and testimony from  
18 Staff and from Intercounty, did you do any other  
19 calculations about depreciation based on their date of the  
20 annexation date of '98?  
21 A. No, I did not.  
22 MS. O'NEILL: I don't have anything further.  
23 JUDGE THOMPSON: Thank you, Ms. O'Neill.  
24 Mr. Comley?  
25 MR. COMLEY: Thank you, your Honor.

1 CROSS-EXAMINATION BY MR. COMLEY:

2 Q. Mr. Bourne, I have a few background questions  
3 for you. Can everybody hear me all right? I'm going to  
4 speak up. If you can't hear me, I'll go back to the  
5 microphone.

6 Let me talk to you a little bit about your  
7 background. I understand you obtained a degree from  
8 North Dakota State University. Where is that?

9 A. Fargo, North Dakota.

10 Q. Fargo. And you also say you worked for an  
11 engineering firm in Kansas City?

12 A. That's correct.

13 Q. And what engineering firm was that?

14 A. Black & Veech.

15 Q. You have been a professional engineer in  
16 Missouri since 1994, correct?

17 A. Correct.

18 Q. And when did you obtain your degree from North  
19 Dakota State?

20 A. 1989.

21 Q. With respect to your duties at RMU, I think  
22 your testimony was you had duties with respect to both  
23 electricity and water; is that correct?

24 A. Correct.

25 Q. Do you also have duties to review requests for

1 proposals and upgrades or improvements to RMU facilities?

2           A.       Yes.

3           Q.       Do you have outside contractors sometimes do

4 work on RMU facilities?

5           A.       I think there are times when outside

6 contractors have been used.

7           Q.       But most of the time it's in-house engineers

8 and technicians that work those kinds of projects?

9           A.       Much of the time, that's true.

10          Q.       Do you evaluate and estimate the costs of

11 those projects before they are constructed?

12          A.       Sometimes, yes.

13          Q.       Sometimes you do. Are there occasions when

14 you do not?

15          A.       Yes. I think there can be cases when we do

16 not.

17          Q.       When you estimate jobs, are the jobs large

18 varieties, long line extensions, or are they smaller

19 projects?

20          A.       It varies.

21          Q.       Let me talk to you a little bit about your

22 analysis of the depreciation method in this case. In your

23 direct testimony you described the method, and if I have it

24 correct, what you have done is estimate the original

25 installation dates for the Intercounty facilities in the

1 area; is that correct?

2           A.       Yes.  They're estimated.

3           Q.       And they're strictly estimates.  They're  
4 not -- you don't know when they were installed; is that  
5 correct?

6           A.       That's correct.

7           Q.       Now, what you're saying is that the original  
8 facilities that were installed say in 1965 would be fully  
9 depreciated by 2001.  I think that's at page 5 of your  
10 direct.  Be at line 10, I think.  Is that a correct  
11 statement?

12          A.       Would you repeat that question?

13          Q.       You're saying that the original facilities  
14 that were installed in 1965, for instance, would be fully  
15 depreciated by 2001?

16          A.       That's correct.

17          Q.       Now, isn't it true that there were additions  
18 and improvements made to Intercounty facilities during that  
19 period of time?

20          A.       There most likely were, yes.

21          Q.       You don't doubt that, do you?

22          A.       No.

23          Q.       Rolla Municipal Utilities certainly will  
24 upgrade and maintain and extend the useful life of its  
25 utilities over a 30-year period; wouldn't that be true?

1           A.       If warranted, yes.

2           Q.       If warranted. On page 6 of your direct, you  
3 assume that Intercounty is only maintaining. I think that's  
4 at page 6, line 4. You say that RMU has assumed that  
5 Intercounty is only maintaining the original facilities and  
6 that they have been depreciating the facilities since they  
7 were originally installed. Is that correct?

8           A.       That's accurate of what I've stated.

9           Q.       Is it also true that certainly some of those  
10 facilities Intercounty has replaced since their original  
11 installation date?

12          A.       That's entirely possible.

13          Q.       Let's talk a little bit more deeply about this  
14 method of depreciation that you've talked about in your  
15 testimony. If Intercounty replaced a transformer on a pole  
16 in 1999, for instance, are you suggesting under your method  
17 of depreciation -- withdraw that.

18                   Let's assume that Intercounty did put a new  
19 transformer on a pole in 1999. Under your method of  
20 depreciation as you discussed it in your testimony, how  
21 would you age that new transformer for purposes of the  
22 calculations we're dealing with?

23          A.       Is that a replacement of a transformer, an  
24 existing transformer?

25          Q.       Let's say it's a new service. Let's say it's

1 a new service in 1999, brand-new transformer.

2           A.       If it were a new service, the -- well, let's  
3 back up a second and let's analyze this a little bit. From  
4 the information we've gathered, okay, and looking at the  
5 information that I've been able to see and the information  
6 provided by Intercounty, there hasn't been any vintage  
7 records provided to us except for -- and I believe there was  
8 some transformer data information provided, but there wasn't  
9 information provided on new services or line extensions,  
10 those sorts of things.

11                    So in the contest of my evaluation, I have  
12 not -- I've not accounted for such a thing because it's a  
13 practical impossibility to do that.

14           Q.       Have you accounted -- under your approach, do  
15 you presume that everything is 35 years old?

16           A.       No, I do not.

17           Q.       Or longer than that?

18           A.       No, I do not.

19           Q.       So you anticipate that there will be certain  
20 facilities that are younger than the rest?

21           A.       Uh-huh.

22           Q.       Is that correct?

23           A.       That's correct.

24           Q.       And does your method take into account the age  
25 of those facilities and depreciate them, say, less than 35



1 years?

2           A.       Yeah. I think it's pretty obvious in my  
3 direct testimony that we assume a -- or I assumed a  
4 percentage of the Intercounty facilities were older than 35  
5 years, and at the time I did this initial analysis, I  
6 assumed the remaining 30 percent were approximately 25 years  
7 old.

8           Now, I'm going to say that at the time that was  
9 assuming some of the -- assuming things that, you know --  
10 back up a little bit more. We didn't have vintage  
11 accounting records from Intercounty and Intercounty did not  
12 provide those on poles, conductors, guy wires, all those  
13 type of things. I think we had several Data Requests asking  
14 for that information.

15          Q.       And you understand it's not available?

16          A.       I understand.

17          Q.       All right.

18          A.       I understand. So you have to start somewhere  
19 and make a, I'll call it educated guess for lack of a better  
20 word. You have to make -- get a starting point of, you  
21 know, when was this pole installed or when was a transformer  
22 originally installed, when was this given conductor  
23 originally installed?

24                   And you have to develop a methodology where  
25 you can try and account for the system as a whole out there

1 as far as what facilities are located in the annexed area  
2 and approximately at what time were those facilities  
3 installed.

4           Q.       I know you have to do that. Now, let's go  
5 back to the other question. I'm unclear about how you're  
6 accounting for a newer facility. What if there's a facility  
7 out there that is ten years old, either it's an improvement  
8 to a, let's say a pole or something that has extended the  
9 useful life of that pole. How do you account for that in  
10 your method of depreciation, if at all?

11           A.       Well, again, the information we had available  
12 to us, I assumed 70 percent was depreciated fully using a  
13 straight line depreciation. I believe it was 30 percent was  
14 depreciated from around 1976.

15                   Now, obviously some of those facilities in  
16 this 30 percent are going to be older than 1975, and  
17 presumably there's some of the facilities that are newer  
18 than 1975 -- or 1976. I'm sorry.

19                   So what I've come up with is a method of  
20 trying to come up with an average age of the balance of the  
21 facilities. So yeah, there may be a case where a  
22 transformer may have been installed in 1999, say, using your  
23 example.

24           Q.       All right.

25           A.       But there also may be another corresponding

1 transformer that was installed in 1966 that I haven't  
2 depreciated for 35 years, I've only depreciated it for 25  
3 years. So there is a balance in there.

4 Q. Let's talk about the one in 1999. Under your  
5 method, isn't it true that if it was -- if there was one in  
6 1999, under your method you'd presume it's 25 years old or  
7 if not older?

8 A. I think that's a generality, but using my  
9 method, I think that would be a fair statement, that I have  
10 assumed that 30 percent of the facilities are about 25 years  
11 old. Some are going to be newer. Some are going to be  
12 older.

13 Q. So the averages would work against Intercounty  
14 if it did have a transformer that's a year old; is that  
15 correct?

16 A. Well, that would work against them, but it  
17 would also work in favor of them if there was a transformer  
18 that was, say, 33 years old that instead of depreciating  
19 at 33 years would only depreciate at 25.

20 Q. Still, there's going to be assets out there  
21 younger than 25 years of age for which there will not be an  
22 accurate assessment of their age or their depreciation; is  
23 that correct?

24 A. I agree.

25 Q. Is that a correct statement?

1           A.       That's a correct statement, as is mine.

2           Q.       You also calculated a gross revenue figure,  
3 and that revenue figure was based upon the list of customers  
4 which Intercounty provided and their respective revenue  
5 histories; is that correct?

6           A.       It was based on a list provided by Intercounty  
7 that had customers from the area, plus additional customers  
8 that were not in the area.

9           Q.       In your testimony you said that you took those  
10 customers out of the area. So you've got that figured out;  
11 is that correct?

12          A.       That's correct.

13          Q.       But there were two customers that you took out  
14 of your consideration, weren't there?

15          A.       That's true.

16          Q.       And I think they're identified in your  
17 testimony as the Country Store?

18          A.       CT Farm and Country.

19          Q.       And then what's the other customer's name?

20          A.       I believe the other customer's -- the property  
21 was owned by Charles Moreland, I believe.

22          Q.       Right, the Charles Moreland property. Now,  
23 you took those properties out because, since the time of  
24 annexation, either those properties were burned or  
25 demolished; is that correct?

1           A.       That's correct.

2           Q.       I can't remember which one was burned and  
3 which one was demolished, but it was since annexation; is  
4 that correct?

5           A.       That's correct.

6           Q.       So you're saying that since the properties  
7 have been torn down or burned since that time, you don't  
8 believe RMU should pay the revenue times four in that  
9 calculation?

10          A.       That's correct.

11          Q.       Staff witness Mr. Ketter has taken a position  
12 on this as well, hasn't he?

13          A.       That's correct.

14          Q.       And he has said that those two customers  
15 should be included, has he not?

16          A.       Yes, that is his testimony.

17          Q.       As far as you know, there's nothing in the  
18 statute which would prevent the Commission from adopting  
19 Mr. Ketter's position in this case; is that correct?

20          A.       I believe that's correct.

21          Q.       On page 29 of your surrebuttal, you talk about  
22 the normalized revenue that was used in Mr. Ledbetter's  
23 analysis; is that correct?

24          A.       That's correct.

25          Q.       And if I'm reading this correct, you objected

1 to the way in which he added revenue for the apartments or  
2 houses that only had part-time occupancy; is that correct?

3 A. That's correct.

4 Q. Now, is it --- did he add 12 months' worth of  
5 revenue for those apartments or did he add something less?

6 A. I believe what he did in the way I interpreted  
7 what he did is he looked at apartments or any account that  
8 did not have 12-month full-time occupancy and he added in  
9 revenue for the months when the property was not occupied.  
10 I don't know how he derived that, if it was an average of  
11 what they used previously. I'm not sure how he did that,  
12 but that's how he did it. That's my understanding how he  
13 did it.

14 Q. You're not saying that apartments wouldn't  
15 have normal revenue to review, is that -- you're not saying  
16 that, are you?

17 A. What I'm saying is that during the normal  
18 course of a year, apartment buildings or rooms, trailers,  
19 those sorts of things are not occupied 100 percent of the  
20 time.

21 Q. But you don't object to the idea of  
22 normalizing revenue for those apartments?

23 A. Yes, I do.

24 Q. You object to normalizing revenue? They do  
25 have normal revenue, don't they?

1           A.       Well, they have normal revenue when someone is  
2 occupying that property.  There's -- there's cases where,  
3 you know, there are properties that RMU serves that are not  
4 occupied 100 percent of the time.

5                   And I think the intent or my opinion of how  
6 this statute is to be used is normalized for weather, some  
7 sort of anomaly that happened during the course of that  
8 occupancy.  Apartments are -- people move in and out of  
9 apartments all the time.

10          Q.       But the Commission could take another opinion  
11 about the statute and what it covers, I'm sure?

12          A.       That's correct.

13          Q.       Okay.  In your direct testimony you had  
14 originally proposed a joint use of poles as a way for RMU  
15 and Intercounty to address the reintegration of  
16 Intercounty's system in the transfer; is that correct?

17          A.       That's correct.

18          Q.       And you've later decided against that  
19 proposal.  Can you tell the Commission why you changed your  
20 mind on that?

21          A.       Well, again, I think we talked at it from a --  
22 we basically started out with a blank slate.  We had to come  
23 up with a plan, and it seemed like at the time that it was a  
24 logical plan to try and use the existing corridors that  
25 existed and not have Intercounty relocate out of those

1 corridors, simply stay in those corridors. We would  
2 under-build them, replace the poles out as required, and  
3 that's how we -- that's how the first plan came into being.

4           Since then, Intercounty's filed rebuttal  
5 testimony which presented an alternative plan, which I do  
6 state in my testimony has merit. It actually cleans up a  
7 lot of issues that may have occurred.

8           Again, there's an issue of whether or not RMU  
9 could -- RMU and Intercounty could come into terms with a  
10 joint use agreement. As of today, that joint use agreement  
11 has not been signed.

12         Q.     Mr. Ledbetter's approach would eliminate the  
13 need for that joint use agreement, wouldn't it?

14         A.     It would. Potentially it would eliminate that  
15 need. So that's one thing that came into effect. It also  
16 provides a cleaner access for RMU to build their structures  
17 and eliminates a duplicate or dual transmission system or  
18 subtransmission system inside the area.

19         Q.     I notice you disagree with the estimates that  
20 he's placed on his reintegration plan.

21         A.     That's correct.

22         Q.     We've talked before about your estimates on  
23 jobs. Are you familiar with the construction of the line  
24 extension for Rolla Street?

25         A.     The one that RMU constructed?

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1 Q. The one that RMU constructed.  
2 A. I've familiar with the line.  
3 Q. Did you do a cost estimate for that one?  
4 A. I did not.  
5 Q. Did anyone in your department do that?  
6 A. I'm not aware of that. That line extension  
7 was planned prior to me becoming an employee of RMU.  
8 Q. And you've been an employee of RMU since when?  
9 A. '98.  
10 Q. Do you know whether there's any information  
11 about the cost of that line?  
12 A. I do not know.  
13 Q. Do you know how much that line cost?  
14 A. No, I do not.  
15 Q. On page 20 of your surrebuttal you talk about  
16 Mr. Ledbetter's use of unit prices from a project involving  
17 the Shawnee Bend area; is that correct?  
18 A. That's correct.  
19 Q. This may sound pretty simple, but wouldn't you  
20 agree with me that the Lake of the Ozarks and that area is  
21 in central Missouri?  
22 A. It's in central Missouri, that's correct.  
23 Q. And Rolla's in central Missouri, isn't it?  
24 A. Again, they're separated by 60, 70 miles, 80,  
25 depending upon where this particular project is.

1           Q.       Do you think that a difference of 60 to  
2 70 miles is honestly going to make that much difference in  
3 the cost of long lines that happen in the area?

4           A.       It could, depending upon the terrain that  
5 this -- I think you're referring to proposals done in  
6 Shawnee Bend. If the terrain was different, there's a lot  
7 of factors that could make those unit prices different than  
8 the prices that Intercounty gave to us during Data Requests.

9           Q.       Well, do you think that -- honestly, do you  
10 think the terrain between the area of Rolla and the Lake of  
11 the Ozarks region we're talking about here is so  
12 significantly different that it's going to make these unit  
13 prices incomparable?

14          A.       Well, I guess the fact is that Intercounty  
15 provided costs during the Data Request process.

16          Q.       Wait a second now.

17          A.       Well, I'm trying to answer your question.

18          Q.       Well, the question, I think, was not involving  
19 what the Data Requests answers were. The question goes to  
20 whether or not there's comparable unit prices.

21          A.       Well, and I would go and say that the costs,  
22 unit costs from the Shawnee Bend project and the unit costs  
23 provided by Intercounty during the Data Requests are  
24 significantly different, and so obviously there must be a  
25 difference. I'm drawing a conclusion.

1           Q.       Now, I don't know exactly what conclusion  
2 you're trying to draw either. The thing is, the unit prices  
3 used for Shawnee Bend can't be much different than the  
4 prices that a person would face to have a project as  
5 significant as this reintegration plan; isn't that correct?

6           A.       No, I don't agree.

7           Q.       On page 28 of your surrebuttal, you talk about  
8 a portion of Mr. Ledbetter's plan that would include the  
9 construction of a 477 aluminum core, is that right, aluminum  
10 core steel reinforced line?

11          A.       Aluminum conductor.

12          Q.       Excuse me. Aluminum conductor steel  
13 reinforced, ACSR. And you object that you would not want  
14 RMU to compensate Intercounty for upgrades to its system.

15                   Let me ask you this question. Do you know  
16 whether Intercounty's system outside this area is already  
17 constructed with 477 ACSR?

18          A.       I'd have to look at the maps that were  
19 provided by Mr. Ledbetter as part of his testimony to  
20 determine that.

21          Q.       Let me ask you this, then. If you were to  
22 learn that the bulk of that system outside the area is  
23 constructed with 477 ACSR, would your answer change?

24          A.       No.

25          Q.       Isn't the role of the statute here to try to

1 have the capacity the same as well?

2           A.       Well, I think the role of the statute is to  
3 provide Intercounty with an equivalent system to what they  
4 have today, and the fact is that the system that's in place  
5 through the area, according to the maps that Mr. Ledbetter  
6 provided, is not constructed with 477 except for a small  
7 portion that Intercounty has discussed, and I think even I  
8 discuss in my testimony that they have about a half-mile  
9 section of 477 in place.

10                   But the majority is constructed No. 4, again  
11 according to the maps, No. 4, No. 2 or 1 aught. And I think  
12 all we're trying to say is we're agreeable to pay for an  
13 equivalent system, but we're not agreeable to having  
14 Intercounty upgrade their system at our expense.

15           Q.       If the system outside the area is needed to  
16 serve 113 customers that are still inside the city limits,  
17 isn't putting a 477 ACSR line into the reintegration plan,  
18 isn't that important to keep that capacity to those 113?

19           A.       Well, I think the -- you're assuming the 113  
20 are served by the substations, and I don't think that's ever  
21 been put into evidence that it is being served. Those 113  
22 are being served by these particular lines.

23           Q.       Let's go to page 27 of your surrebuttal.  
24 There you address your disagreement with including costs for  
25 right of way acquisition and clearing in the reintegration

1 plan. I think that's what you're talking about here, your  
2 reintegration plan.

3 Do you know how wide the easements are for the  
4 existing lines that we're trying to reintegrate?

5 A. The lines that are currently run through the  
6 area or the lines outside the area?

7 Q. Excuse me. The lines outside the area.

8 A. No, I do not.

9 Q. These are single phase lines, aren't they?

10 A. Some are. According to Mr. Ledbetter's  
11 testimony, I believe some are single-phase, some are  
12 three-phase.

13 Q. There's quite a bit of single-phase, isn't  
14 there?

15 A. There is some.

16 Q. Do you know what the electrical codes or  
17 whether the code governing construction of these lines would  
18 say about how wide a three-phase easement should be?

19 A. I don't believe there's any code requirement  
20 for it, although based on the easements that have been  
21 provided from Intercounty to RMU, the majority of the time  
22 Intercounty uses a blanket easement which does not specify.

23 Q. They may use a blanket easement, but do you  
24 think the blanket easement's being used for those areas  
25 outside there? You don't know that, do you?

1           A.       I do not know that for sure. It's just been  
2 common practice with what I've seen from the Intercounty  
3 easements.

4           Q.       Presuming that the upgrade that you're talking  
5 about here -- excuse me.

6                    If Intercounty were to have to expand or widen  
7 its existing easements in order to have three-phase lines  
8 installed, would your answer change?

9           A.       I think I'd have to see documentation showing  
10 that they've got a certain width easement now and it can't  
11 be built on that. But typically you're looking at a  
12 footprint of a pole and it's going to be still a footprint  
13 of a pole when you build your new conductor.

14                   Now, you're not going to have a crossarm, but  
15 typically you're not building anything larger or that much  
16 different than a single-phase line.

17           Q.       I recognize that, but even so, if a code says  
18 you have to build it with a 30-foot easement, you've got to  
19 do it, don't you?

20           A.       I'm not aware of any code that says you need  
21 that.

22           Q.       But if you there is, somebody's going to have  
23 to live up to it; wouldn't that be correct?

24           A.       If there is, which I still don't think there  
25 is, that's a possibility.

1 Q. On page 22 of your direct, let me go back and  
2 talk a little bit about easements. I've got this organized  
3 by subject, not necessarily by testimony.

4 But on those -- on that page, you start  
5 talking about your position about the easements that  
6 Intercounty has. As I understand it, you believe that the  
7 condition of the easements Intercounty uses is such that you  
8 will need to condemn those same rights across property if  
9 the application in this case is approved; is that correct?

10 A. That's a possibility, that's correct.

11 Q. And you've estimated the amount to obtain a  
12 form of easement that you would like to have at \$408,000 and  
13 some -- let's see, \$408,892?

14 A. Yeah. I believe it was rounded off to 400,000  
15 in the cost estimate.

16 Q. This estimate was obtained by discussing it  
17 with your city counselor; is that correct?

18 A. That was one person it was discussed with.

19 Q. Is there anybody else named in your testimony  
20 that you addressed this with?

21 A. I may have you reference what page you're on  
22 again.

23 Q. Page 22, line 17 through 22, I think. Excuse  
24 me. It's page 23.

25 A. On my direct?

1 Q. Right. At lines 5 through 10, I think.

2 A. I think we -- I discussed this informally with

3 the city counselor. I also discussed it with a local

4 engineering company on what approximately it would cost to

5 survey the area to come up with the 80,000.

6 And then I think for the potential

7 condemnation awards, I think we just used a number of, I

8 think -- I don't recall exactly, but I think it was 25 cents

9 per square foot.

10 Q. And that came from discussions with the city

11 counselor's office?

12 A. I think that was more -- yeah. That's

13 correct. That is correct.

14 Q. So far as I can tell, your costs of

15 condemnation were not based upon historical costs that RMU

16 has experienced in the past, correct?

17 A. Not the condemnation awards itself, but there

18 have been cases when RMU has reimbursed a customer for an

19 easement, and that historically has been the cost we've used

20 for reimbursement of the easement. Again, depending on the

21 situation, but that's been one cost we've used.

22 Q. Do you know in your experience whether RMU has

23 ever had to condemn an easement in the past ten years?

24 A. I can only go back the two years I've been

25 here. In the two years I've been here, I'm not aware of any



1 easements that we have condemned.

2 Q. And in conjunction with your testimony, no one  
3 at RMU suggested you could go back and take a look at  
4 condemnation records?

5 A. No.

6 Q. Switch you back to your surrebuttal. On  
7 page 8 of your surrebuttal you say that Intercounty should  
8 not be rewarded for acquiring easements that are not  
9 recordable on their face or are not recorded; is that  
10 correct?

11 A. What line are you on?

12 Q. Line 3.

13 A. On page?

14 Q. Eight.

15 A. Of my surrebuttal?

16 Q. Page 8 of your surrebuttal, line 3.

17 A. I'm not -- oh, okay. I see where you're at.  
18 Yeah, that's a correct statement.

19 Q. Let me ask you this. Is it RMU's position  
20 that paying Intercounty for any of the easements would be  
21 penal to you?

22 A. I'm not sure I understand your question.

23 Q. Is it punishment for you to have to pay for  
24 these easements?

25 A. I don't believe it's a punishment, no, but I

1 don't think -- in some cases there are easements that, for  
2 example, may not be notarized and may not be considered a  
3 legal document. I'm not an attorney, but one could say that  
4 if it's not a notarized easement, whether it's recorded or  
5 not, it may or may not be a legal document.

6                   I think we have stated as far as the paying  
7 for the -- or reimbursing Intercounty for the system in the  
8 area, I think we have corrected in our surrebuttal  
9 testimony, we are willing to pay for right of way and right  
10 of way acquisition as outlined by, I think, Mr. Nelson, I  
11 believe. It's either Mr. Nelson or Mr. Ledbetter.

12                   And we've said that's a fair and reasonable  
13 cost and we'll pay that cost, even though the quality  
14 easements may or may not be what we considered the best of  
15 quality.

16           Q.       Now, understand that this is an involuntary  
17 taking of intercompany 's facilities?

18           A.       I understand.

19           Q.       You understand that? Do you think that  
20 Intercounty is receiving a reward by an involuntary takeover  
21 of their facilities?

22           A.       I don't know if I'm qualified to answer that.  
23 It's a --

24           Q.       You used the word reward in your testimony,  
25 Mr. Bourne.

1           A.       What I say in my testimony is RMU does not  
2 believe that Intercounty should be rewarded for acquiring  
3 easements that on their face are not recordable or failure  
4 to record easements that are recordable.

5                   Now, our -- and I think the point I'm trying  
6 to make here is that the easements that we would be  
7 acquiring are of a -- the easements that we would be  
8 acquiring, on their face, some of them are not recordable.  
9 Some of them are recordable and have not been recorded.

10                   And what we would be doing is getting  
11 easements that may or may not be contested in the future by  
12 property owners, mortgage holders. We don't know.

13           Q.       Let's go to line 10 at page 8. You say that  
14 RMU believes there's nothing in the statute that prevents  
15 the Commission in determining fair and reasonable  
16 compensation from reducing the value of Intercounty's  
17 facilities that is otherwise applicable by the amount of  
18 this potential liability.

19                   Is it also fair to say that there's nothing in  
20 the statute that would prevent the Commission from ruling  
21 that you take those easements as you find them?

22           A.       That's correct.

23           Q.       On page 15 of your surrebuttal, lines 8  
24 through 9, you talk about the issues of condemnation again,  
25 I think. You say that the issue of condemnation did not

1 exist if Intercounty followed a procedure of obtaining legal  
2 easements and recording all of their easements. I think  
3 recording all of their easements is what you meant to say.

4 A. What page again?

5 Q. Page 15, lines 8 through 9.

6 A. Okay.

7 Q. Now, first, you are not a lawyer; is that  
8 correct?

9 A. That's correct.

10 Q. And you say the use of legal easements.  
11 You're not claiming that there's any illegality in the  
12 manner in which Intercounty has obtained its rights of way  
13 and easements; is that correct?

14 A. No.

15 Q. On line 14 of your testimony, you also state  
16 that the problem is solely that of Intercounty's making and  
17 responsibility. Is it true that you're referring to the  
18 problem you foresee with the easements?

19 A. Yes. The problem of obtaining easements that  
20 I've seen that are, some of them not being notarized, some  
21 of them that have been notarized and not recorded, and  
22 there's also cases where we requested easements and  
23 Intercounty has not produced easements where lines are in  
24 place at the present time.

25 Q. Well, judged by what you know about the

1 operations in the annexed area, is it fair to say that  
2 Intercounty is operating efficiently and operating  
3 successfully with the rights of way and easements it already  
4 has?

5           A.       That's correct, that they appear to be  
6 operating within the boundaries of whatever rights they  
7 think they have, that's correct.

8           Q.       As far as we can tell in this proceeding,  
9 customer satisfaction has not diminished at least by the  
10 degree of easements or lack thereof that Intercounty has?

11          A.       No.

12          Q.       And normally RMU would approach a property  
13 owner and ask for an easement across the ground and ask that  
14 it an exchange for a nominal consideration. Is that  
15 standard procedure?

16          A.       Not necessarily. We do not always reimburse  
17 for an easement.

18          Q.       You don't, but you would go to a property  
19 owner first and --

20          A.       But we would approach them. That would be the  
21 ideal situation.

22          Q.       You'd ask for it to be gratis, free?

23          A.       That is correct.

24          Q.       And normally people are cooperative with that  
25 request; isn't that correct?

1           A.       Normal situations, that's correct.

2           Q.       People would grant you an easement for free,  
3 maybe with some conditions attached, but generally without  
4 any kind of compensation changing hands; is that correct?

5           A.       That's correct.

6           Q.       Now, as I understand it, you do not expect  
7 this same kind of situation if the Commission approves the  
8 application you have before it in this case, if you went  
9 down to the annexed area and asked for easements?

10          A.       There's no way of knowing that.

11          Q.       But you've estimated \$408,000 worth of  
12 trouble?

13          A.       Well, yeah. Yes. That's correct.

14          Q.       You say there's no way of knowing that, but  
15 you're anticipating that this is going to happen?

16          A.       Yes.

17          Q.       Isn't that correct?

18          A.       I think that's an assumption we have made.

19          Q.       Isn't it true that you know that you're  
20 anticipating -- let me strike that.

21                    You're anticipating these kinds of problems  
22 because there's an understanding that customers in the  
23 annexed area are quite reluctant to take RMU service; is  
24 that correct?

25          A.       No. I've not had discussions with any of the

1 people about obtaining electrical easements. I don't know  
2 what kind of problems we might foresee.

3           If, for example, we had to change out a  
4 single-phase line and make it three-phase or do some sort of  
5 adjustment or even replacing a pole, you could have a  
6 property owner, whether they are in favor of this proceeding  
7 or not in favor, say, You can't -- you have no right to be  
8 here. You have no lawful reason to be in my backyard. We  
9 don't -- I don't know that. I don't know that.

10          Q.       You don't know it, but you still want to have  
11 something in the compensation schedule here anticipating  
12 problems with getting easements from people?

13          A.       Well, I think that's evident in what I've  
14 stated in my testimony, that there could be a potential  
15 problem there. There may be no problem, but I think, you  
16 know, the whole point is that you try and look out for any  
17 potential problems that we may have.

18          Q.       Isn't it true that in all likelihood you're  
19 anticipating not being able to go to a property owner in the  
20 annexed area, I'll say a former member of Intercounty, and  
21 getting an easement change without compensation?

22          A.       It's possible that we could run into a  
23 situation where, yes, we could ask for an easement and it  
24 not be granted or they may require compensation.

25          Q.       Are you saying it may or is it going to

1 happen?

2           A.       I'm saying it may happen.

3           Q.       It may happen. Your estimate indicates that  
4 it seems as if you think it's more likely to happen than  
5 not; is that correct?

6           A.       I think the estimate we did was a worst-case  
7 scenario.

8           Q.       Do you think it's also true that you wouldn't  
9 have a problem with condemnation if the City of Rolla simply  
10 followed its Plan of Intent?

11          A.       I'm not sure I follow your question. Can you  
12 rephrase that?

13          Q.       Isn't it also true that the City of Rolla  
14 would not have a problem with this issue of Intercounty's  
15 easements if it had simply followed its Plan of Intent?

16          A.       I'm not sure I could correlate the two.

17          Q.       The two? Well, if you didn't file -- if you  
18 didn't file your application, there would not be an issue  
19 concerning condemnation of these easements; is that correct?

20          A.       I believe that's correct.

21          Q.       And the decision to file that application and  
22 the decision not to follow the Plan of Intent weren't  
23 Intercounty's decisions, were they?

24          A.       I think you'd have to ask that question of  
25 Mr. Watkins.



1 Q. As far as you know, Intercounty had no control  
2 over the Plan of Intent; is that correct?

3 A. I don't know that to be the case.

4 Q. On your Revised Schedule RB-5, you have set  
5 out a figure of \$66,791 for the total facility cost that you  
6 propose to pay Intercounty if the application is approved;  
7 isn't that correct?

8 A. That's correct.

9 Q. And these are the facilities that are located  
10 on the easements that you're talking about in your  
11 testimony; is that correct?

12 A. That's correct.

13 Q. Now, in comparing the cost of what you want to  
14 pay for the facilities and the price you want deducted from  
15 the easements, you're wanting this Commission to essentially  
16 tell Intercounty to give you \$400,000 for the sake of  
17 involuntarily taking \$66,000 worth of facilities; is that  
18 correct?

19 A. No, I don't believe that's correct. I  
20 think --

21 Q. Just looking at the facilities alone,  
22 Mr. Bourne.

23 A. I think -- I think there's two issues. One is  
24 the statute calls out determining a fair -- the reproduction  
25 costs new, less depreciation. That's one issue, which I

1 think we've stated that is the 66,791-odd dollars.

2 I think the statute also talks about other  
3 considerations. I'm not sure of the exact language, but  
4 there's another thing of additional costs, and I think the  
5 lack of recorded easements could fall under that additional  
6 category, that other category.

7 Q. It could, but just looking at the facilities  
8 alone, just looking at the facilities alone, isn't it true  
9 that you're asking Intercounty to pay you for the  
10 involuntary takeover of its facilities?

11 A. I don't think that's true. I think it's two  
12 separates issues.

13 Q. On the issue of reliability, I think you and  
14 Mr. Nelson changed barbs on this a little bit. You have  
15 discussed the outage records you keep in your testimony.  
16 I'm sorry. I don't have exactly the reference to that.

17 But if I were to visit your offices to check  
18 on an outage, I could find out when the outage occurred, its  
19 duration and its cause; is that correct?

20 A. I believe if you came to our office we'd have  
21 to -- and inquired about a specific outage, we'd go to the  
22 records that we keep of that. We'd have to find that. And  
23 normally what is on there is the date it happened, time, if  
24 known, and cause, if known.

25 Q. And cause if known. But that would be the

1 only information I could see on that record; is that  
2 correct?

3           A.       There may be additional information. I  
4 haven't looked on those records in quite some time, but  
5 that's the basic information that would be contained on  
6 them.

7           Q.       When you say there may be additional  
8 information, it's information that is not required by your  
9 policy to insert?

10          A.       It's a standard form that we fill out whenever  
11 there's an outage.

12          Q.       If I would look at your form, I would not know  
13 the response time for that outage? I couldn't  
14 see --

15          A.       I don't believe that's listed on the form.

16          Q.       Or to know what customers were affected by the  
17 outage?

18          A.       I don't believe that information is on the  
19 form specifically, no.

20          Q.       Could I look on that form and find out when  
21 power was restored to all those who had lost power?

22          A.       I believe there is a duration of outage. So  
23 you could probably infer that from looking on the form.

24          Q.       You could infer it, but it's not on a customer  
25 basis?

1           A.       Not on a per customer, no.

2           Q.       You address PCBs and transformers. I don't  
3 know exactly where that is in your testimony. But my  
4 question about that is, do you know of any regulation which  
5 requires Intercounty to test for PCB contamination at any  
6 time during their use of transformers that have suspected  
7 PCB contamination?

8           A.       Hang on a second. I'm looking to see if I  
9 mention anything in my testimony about it.

10                    Could you state that question one more time?

11          Q.       Do you know of any regulation which requires  
12 Intercounty to test for PCBs at any particular time during  
13 their use of transformers that may be contaminated by PCBs?

14          A.       During the -- while the equipment is in  
15 service, no, I don't believe -- I'm not aware of any code,  
16 no.

17          Q.       So there is no specific time when they have to  
18 be tested?

19          A.       I'm not aware of the particulars of that, no.

20                    MR. COMLEY: Judge, may I have just a minute?

21                    JUDGE THOMPSON: You may.

22 BY MR. COMLEY:

23          Q.       Mr. Bourne, just a few more questions. Would  
24 you happen to know how often Rolla Municipal Utilities  
25 changes out a meter?

1           A.       No idea.

2           Q.       Is a meter something that would be changed out  
3 more often than other kinds of distribution equipment?

4           A.       I don't know.

5           Q.       Would you agree with me that electrical use in  
6 the annexed area as well as in Rolla has increased  
7 significantly over the past five to six years?

8           A.       What do you mean by electrical use?

9           Q.       A lot more energy is being demanded by  
10 customers.

11          A.       I don't know I could make -- if I could make  
12 that correlation.

13          Q.       So you haven't had a chance to review the  
14 demand figures that RMU has had now and in the past?

15          A.       No.

16                   MR. COMLEY: That's all I have. Thank you.

17                   JUDGE THOMPSON: Thank you, Mr. Comley.

18 Mr. Dunbar?

19                   MR. DUNBAR: Thank you, Judge.

20 CROSS-EXAMINATION BY MR. DUNBAR:

21          Q.       Directing your attention to your direct  
22 testimony, looking at page 13, where it starts with line 5  
23 where you're asked the question, What would happen if the  
24 Commission does not rule in RMU's favor and order the sale  
25 of Intercounty facilities within the area? Do you see where

1 I'm referring to?

2 A. Uh-huh.

3 Q. You have to be sure and say yes or no.

4 A. Yes. That's correct. I'm with you.

5 Q. Your response was basically that, for the most

6 part, in the undeveloped areas this would not be a problem;

7 is that correct?

8 A. What I say --

9 Q. Starting at line 8.

10 A. What I say is, For the most part, this does

11 not present any problems in the undeveloped areas.

12 Q. With regard to the developed areas, I take it

13 you're referring primarily to the -- there's four

14 subdivisions; is that correct?

15 A. For the developed areas, I would be referring

16 to those subdivisions plus any other areas of high

17 congestion where there's a large amount of users in a small

18 area.

19 Q. And primarily that consists of four

20 subdivisions; is that correct?

21 A. Primarily, that's correct.

22 Q. And within those four subdivisions, those

23 subdivisions except for a very few lots are all developed;

24 is that correct?

25 A. Depends on the subdivision you'd be talking

1 about.

2 Q. Well, and we're getting into averages here,  
3 but for the most part the subdivisions are all completely  
4 developed that you're talking to; is that correct?

5 A. No, that's not correct.

6 Q. Well, with regards to vacant lots, are you  
7 talking subdivisions that have less than five or more than  
8 five vacant lots, or do you know?

9 A. Well, again, I think it depends upon the  
10 subdivision. The Swangee Subdivision area, that is a  
11 subdivision that's fairly heavily developed, but there are  
12 vacant lots still available.

13 Parkview Subdivision, I think if you went and  
14 looked at the developable lots in there might be a 50/50. I  
15 don't have exact statistics, but there are -- Parkview comes  
16 to mind immediately of that is a subdivision that has not  
17 seen a lot of growth in it for whatever reason.

18 Q. With regards to RMU and Intercounty, it's true  
19 that Intercounty presently has customers within the City of  
20 Rolla excluding the annexed area; is that correct?

21 A. That's correct.

22 Q. And there are approximately 113 of those  
23 customers located within the City of Rolla, again excluding  
24 the annexed area?

25 A. That's the number that's been used in

1 testimony, yes.

2 Q. Is it more than that, or does that sound about  
3 right?

4 A. That sounds about right, yes.

5 Q. And those customers have continued to receive  
6 Intercounty services through basically a -- basically  
7 informal agreements between RMU and Intercounty; is that  
8 correct?

9 A. I think they're still Intercounty residents  
10 because it depends upon what the year is, and I think  
11 Mr. Watkins could more address when the different statutes  
12 took place, but those customers are still Intercounty  
13 customers because either they didn't see an opportunity to  
14 change or didn't have a reason to change or there could have  
15 been a myriad of reasons why they did not change service at  
16 different times depending on when they came into the city.

17 Q. And one of those reasons could also be that  
18 RMU just didn't want to pay to attempt to acquire those  
19 customers; is that correct?

20 A. That's a possibility.

21 Q. Looking at page 6 of your surrebuttal,  
22 starting at line 3, it's answering a question in response, I  
23 guess, to Mr. Ketter's discussing the merits of the  
24 carefully crafted joint use agreement. Do you see where I'm  
25 referring to?



1           A.       I see that.

2           Q.       Basically you provide an answer that

3 Intercounty and RMU have had a long history of joint use

4 poles in the Rolla area, and all the joint installations on

5 poles have been accomplished without the benefit of a joint

6 use agreement; is that correct?

7           A.       That's correct.

8           Q.       So basically, RMU and Intercounty could use

9 some kind of joint use agreement as far as serving these 286

10 people into the annexed area, is that correct, if you had to

11 go in and provide services to some new customers? Could you

12 not continue to do that?

13          A.       Are you saying that RMU and Intercounty would

14 have conductors on the same poles to serve these customers?

15 Is that --

16          Q.       I'm just looking from where your testimony is,

17 that installations have included both crossing and joint

18 constructions along the same pole lines, that you and

19 Intercounty have done that in the past?

20          A.       And I think I go on to state that those have

21 been done without a joint use agreement. But in today's, I

22 hate to say litigious society with all these lawyers

23 present, but in --

24          Q.       I appreciate you knocking lawyers, but --

25               MR. DUFFY: Your Honor, can the witness be

1 allowed to answer the question?

2 THE WITNESS: What --

3 MR. DUNBAR: I'm going to say it's not  
4 responsive at this point by trying to add in litigious  
5 society, so --

6 JUDGE THOMPSON: Kellene, would you please  
7 read back the question?

8 (THE REQUESTED TESTIMONY WAS READ BY THE  
9 REPORTER.)

10 JUDGE THOMPSON: Mr. Bourne, do you have  
11 anything to add to the answer you've given so far?

12 THE WITNESS: Well, the joint use agreements  
13 we're -- or the joint use of poles that has happened in the  
14 past has been without the benefit of a joint use agreement.

15 RMU's position as of today is that unless a  
16 joint use agreement is negotiated with an adjoining utility,  
17 whether that be Intercounty or one of the cable providers or  
18 telephone providers, that we cannot share a pole in any  
19 future installation unless we have a joint use agreement  
20 that's signed by both parties.

21 So what I'm saying is, in these areas, unless  
22 we have a joint use agreement, no, we could not share joint  
23 poles.

24 BY MR. DUNBAR:

25 Q. And you go on to say that, I believe that once

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1 a joint use agreement is implemented between Intercounty and  
2 RMU, we can continue to share common poles as has been the  
3 case in the past; is that correct?

4 A. That's correct. But I guess I'd like to add  
5 that --

6 Q. He's answered the question.

7 Following up, Mr. Comley had asked questions  
8 concerning outages. I take it it's true there RMU does have  
9 outages in different locations in the City of Rolla; is that  
10 correct?

11 A. I think every utility would, and I'd agree  
12 that RMU has had outages in the past.

13 Q. And you would agree that these outages are  
14 basically just -- is there any one location where outages  
15 are recorded at RMU, where there's one set of documents you  
16 can go to?

17 A. There's -- yeah. The outage records that we  
18 keep are in one location, if that's what you're referring  
19 to.

20 Q. And these outage records do confirm that RMU  
21 does suffer outages in different locations in the city of  
22 Rolla?

23 A. That's correct.

24 Q. Now, with regards to response time, RMU, your  
25 facilities are basically located in one area inside the city

1 of Rolla; is that correct?

2           A.       Yeah. Our service center is in one location,  
3 that's correct.

4           Q.       Now, from that service center, can you be at  
5 any location site within the city of Rolla within ten  
6 minutes?

7           A.       From that site, driving time, yeah, I think  
8 you can get to any place in Rolla in approximately ten  
9 minutes or less.

10          Q.       Are there some sites it would be longer than  
11 ten minutes?

12          A.       I can't think of any.

13          Q.       Do you know what the furthest location from  
14 the Rolla service center, what the longest point from there  
15 to any place in the city is?

16          A.       Not off the top of my head, no.

17                   MR. DUNBAR: No further questions.

18                   JUDGE THOMPSON: Thank you, Mr. Dunbar.

19 Questions from the Bench, Chair Lumpe?

20 QUESTIONS BY CHAIR LUMPE:

21          Q.       Mr. Bourne, these are probably mostly  
22 clarification questions. On the expanded customers or the  
23 customers that are with Intercounty and are currently in the  
24 old city boundaries, are you asking to pick those up also?

25          A.       I don't believe that part of our -- I don't

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1 believe that's part of our application, no, ma'am.

2 Q. So the application does not address those  
3 stranded customers?

4 A. No, ma'am.

5 Q. You are not suggesting, are you, that the coop  
6 has agreed to give up its customers and now the only  
7 question is compensation, or do you think they have agreed  
8 at some point to give those customers up?

9 A. I don't believe they've agreed to that, no.

10 Q. All right. Did the utility, RMU, participate  
11 in any of the annexation meetings along with the City? Were  
12 they aware of the Plan of Intent or promises made to  
13 customers during the many, many annexation meetings over  
14 time?

15 A. I was not an employee of RMU at the time, so  
16 I'm not aware of what was discussed at any of those  
17 meetings. I think Mr. Watkins when he's on the stand would  
18 be better equipped to answer that question.

19 Q. So it's -- I guess what I'm trying to get at,  
20 did the City make promises that the utility didn't agree  
21 with? Was the utility there and heard those promises? You  
22 don't know?

23 A. I don't know.

24 Q. All right. Your comments on page 28 with  
25 regard to constructing a similar system but not an upgraded

1 one, when you're talking about the similar system, you're  
2 including the upgrades that have been done, or are you not?

3           In other words, if Intercounty has a system  
4 and they have done some upgrades on that, you're calling  
5 that the whole system that's entitled to compensation?

6           A.       Right. I think what we've stated in -- or  
7 I've stated in my testimony is that we would pay for  
8 their -- for their system, we would pay them present day  
9 reproduction costs new. So that should include in the area  
10 any conductors that they've changed out, transformers, guys,  
11 all those types of facilities. All those types of costs  
12 were presented.

13          Q.       So when you say you wouldn't pay for an  
14 upgraded one, you're talking about some new system that is  
15 above and beyond anything they have now, is that what you  
16 mean?

17          A.       What I'm saying here is that the current  
18 system of conductors for their tie lines through the area  
19 are currently of one aught and smaller conductor size, and  
20 what Mr. Ledbetter has proposed from the Intercounty side  
21 is, when they rebuild these lines around the city, that  
22 they're going to install larger conductor size, a 477, which  
23 I think in my testimony I say is twice the conductor size,  
24 actual diameter, and about two and a half times the carrying  
25 capacity of the system they've got in place in the area.

1                   So what we're saying is we'll pay -- there's  
2 two issues here. One is what is the fair -- or what is the  
3 facility cost of what's in the area, and we've said that  
4 we'll pay for the reproduction costs new of that facility.

5                   And we've said we will pay for you to reroute  
6 your conductors around the city, and we'll pay for you to  
7 construct a system that's equivalent to what you have today.  
8 But if you would like to upgrade your system while you're in  
9 the process of building around the city, Intercounty would  
10 be responsible for the incremental cost of that larger  
11 conductor size.

12           Q.       Okay. I think I understand that, then. I  
13 heard a figure from Intercounty's bottom line. I think I  
14 heard a figure from Staff. What is your figure that you  
15 think the bottom line that you should be compensating them?

16           A.       The number presented in our testimony is  
17 \$1,285,210.83.

18           Q.       So there's quite a divergence there, is there  
19 not?

20           A.       Yes, ma'am.

21           Q.       Okay. On the depreciation, if the statute  
22 says present day reproduction costs and we assume that's the  
23 100,000 that was used in the example, and if the item is  
24 depreciated down to zero, does that mean that the full  
25 present-day reproduction costs would be the costs that

1 should be compensated?

2           A.       I think -- yeah. There's two aspects. The  
3 present-day reproduction costs, which you're saying if the  
4 facility costs \$100,000, if I understand you correct --

5           Q.       And that's the present-day reproduction cost.

6           A.       -- and if you say that piece of equipment has  
7 been in place for 35 years, approximately what the full  
8 depreciation is and it's been fully depreciated off  
9 according to the statute, yeah, the final figure for the  
10 facility cost would be a net zero. Did I answer your  
11 question?

12          Q.       Yeah, but you confused me. Actually, are you  
13 telling me I was totally wrong?

14          A.       Yeah. I think there's --

15          Q.       In other words, the present-day reproduction  
16 costs would be zero?

17          A.       No. The present-day reproduction costs new  
18 would be \$100,000.

19          Q.       Right.

20          A.       And you're saying you fully depreciated out  
21 over the life. So the depreciation would have been  
22 \$100,000. So 100,000 minus 100,000 would get you a net  
23 facility cost of zero dollars.

24          Q.       Is it conceivable there would be a negative  
25 figure?



1           A.       No. I don't think you --

2           Q.       There's no way that you could get to a --

3           A.       We have not. We have not calculated any sort

4 of negative figure on that.

5           Q.       You talk about duplication. What is your

6 concern about duplication?

7           A.       Well, let's say that nothing -- the Commission

8 decides not to award this or not to award in RMU's favor.

9 RMU, and we do this anyway, is we're obligated under state

10 statute to provide service to our customers. We will be

11 installing a system into the annexed area to pick up any new

12 load and any new customers, and there will be places where

13 we will have crossings with Intercounty, again, assuming

14 that the Commission does not find in favor of RMU.

15                   And any time you get into a residential area

16 or an existing subdivision and RMU is going to install a

17 system to pick up a certain amount of customers, Intercounty

18 is it already in the subdivision servicing their customers,

19 you're going to get points of crossing, possibly points

20 where the two systems are running in parallel with each

21 other.

22                   You get into a situation where there's more

23 congestion in the subdivision than would otherwise normally

24 be if it was just a single provider.

25           Q.       Is that an aesthetic issue as opposed to

1 anything else?

2           A.       It can be an aesthetic issue. It potentially  
3 could be a safety issue. But again, we would be building to  
4 NESE clearances just like Intercounty would do.

5                   But again, when you get into a situation where  
6 you have more congestion in an area where you've got two  
7 utilities providing, call it dual systems, there's always  
8 the potential that you could have safety issues.

9           Q.       But if you build it to code and all that sort  
10 of thing, it shouldn't be, should they?

11          A.       Yeah. Building to code, it should minimize  
12 those types of issues.

13                   CHAIR LUMPE: Thank you. I think that's all I  
14 have.

15                   JUDGE THOMPSON: Thank you, Chair Lumpe.  
16 Commissioner Murray?

17                   COMMISSIONER MURRAY: I just have a couple of  
18 short questions.

19 QUESTIONS BY COMMISSIONER MURRAY:

20          Q.       Anywhere within the annexed area is there  
21 currently any zoning for commercial or industrial?

22          A.       I believe that there are areas in the annexed  
23 area that are commercial. I'm not sure if there's any  
24 industrial. That's possible.

25          Q.       Do you know if any of the customers that are

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1 currently being served are commercial customers?

2           A.       I'm not sure.

3                   COMMISSIONER MURRAY: I believe that's all I

4 have. Thank you.

5                   JUDGE THOMPSON: Thank you, Commissioner

6 Murray. Commissioner Schemenauer?

7                   COMMISSIONER SCHEMENAUER: Thank you, your

8 Honor.

9 QUESTIONS BY COMMISSIONER SCHEMENAUER:

10           Q.       Good afternoon, Mr. Bourne.

11           A.       Good afternoon.

12           Q.       I'd like to revisit a question Chair Lumpe

13 asked you, and you stated that by statute you're required to

14 furnish electric power to new customers in this area?

15           A.       That's correct.

16           Q.       Doesn't the statute say you may furnish

17 electric power to these new structures and if you so desire

18 you do a certain amount of things? Isn't that the reading

19 of the statute?

20           A.       That's possible.

21           Q.       I just read it, so I know it's there. Okay.

22 Any municipally-owned electric utility may extend pursuant

23 to blah, blah, blah. And then it tells if you desire to do

24 it, how you're going to do it. So you're not required to do

25 it, but you're going to do it. Is that what we understand?

1           A.       Yes.  If what you're saying is correct, I  
2 would agree with that.

3           Q.       Okay.  Are you doing that right now?  Are you  
4 servicing any new structures in the annexed area?

5           A.       Yes.

6           Q.       And you're doing this through new lines that  
7 you ran into the area?

8           A.       Yes.

9           Q.       And you used Intercounty's poles or did you  
10 set your own poles?

11          A.       We set our own poles.

12          Q.       And this is only to newly constructed  
13 structures?

14          A.       That's correct.

15          Q.       If a homeowner sells their home to a new  
16 resident, do you consider that a new structure?

17          A.       Referring to an existing Intercounty customer  
18 sells to a new person?  No, we do not consider that a new  
19 structure.

20          Q.       If an Intercounty customer's house burns down  
21 or it's destroyed by a tornado and it's rebuilt either by  
22 that same resident or a new resident, do you consider that  
23 as your customer by law?

24          A.       I think that might get into something that  
25 Mr. Watkins would be better equipped to address.  I think

1 that gets into a policy issue.

2 Q. So you don't know?

3 A. I do not know, that's correct.

4 Q. In your surrebuttal on page 8, I think line  
5 10, you state that RMU believes there's nothing in the  
6 statute that prevents the Commission, in determining fair  
7 and reasonable compensation, from reducing the value of  
8 Intercounty's facilities that is otherwise applicable by the  
9 amount of this potential liability, and this is the right of  
10 ways.

11 Does RMU believe that the Commission can set  
12 different values for different areas of this annexed or this  
13 taking than what either RMU says or Intercounty Electric  
14 says?

15 A. I believe that's the Commission's end goal is  
16 to determine that amount, and I do not believe it has to  
17 follow our recommendation or anyone's recommendation.

18 Q. Okay. So you agree it's within the bounds of  
19 our authority to set that value?

20 A. Yeah. I would agree with that.

21 Q. And it's not restricted to which either one of  
22 these --

23 MR. DUFFY: Your Honor, we'd stipulate that's  
24 the case, but any decision you make would have to be  
25 supported by substantial and competent evidence.

1 COMMISSIONER SCHEMENAUER: As always, right?

2 MR. DUFFY: As always.

3 BY COMMISSIONER SCHEMENAUER:

4 Q. I have one more question. Were you in any of

5 the negotiations with Intercounty?

6 A. No, I was not.

7 Q. You were not in any negotiations with them

8 regarding anything?

9 A. No.

10 Q. And you're the engineer, right?

11 A. That's correct.

12 Q. Would there be any reason, if Intercounty

13 Electric desired to sell the City power, a contract power

14 for these lost customers, that that would not be agreeable

15 from an engineering standpoint to RMU?

16 A. I think it comes more down to that we've got

17 a -- and again, Mr. Watkins probably is the better person to

18 answer this, but I believe we've got a full requirements

19 contract with AmerenUE currently, and I think the supplier's

20 going to change, but again, I think it will be a full

21 requirements contract. So I don't believe we can contract

22 with anyone else for this power.

23 Q. Now, the statute says that if Intercounty

24 Electric desires to sell you this, you're going to have to

25 negotiate. Are you telling me your contract would supersede

1 the statute?

2           A.       My understanding is you asked about  
3 contracting just for the purchased power.

4           Q.       Yes.

5           A.       I'm not sure there's anything in the statute  
6 that discusses purchase of power anywhere.

7           Q.       The statute says, If the affected electric  
8 supplier so desires, the parties shall also negotiate  
9 consistent with applicable law, regulations and existing  
10 power supply agreements for power contracts which would  
11 provide for the purchase of power by the municipality from  
12 the affected electric supplier for an amount of power  
13 equivalent to the loss of any sales to customers receiving  
14 permanent service at structures within the annexed area  
15 which are being sought by the municipal or electric utility.

16                   Does that sound to you like you're required to  
17 negotiate if Intercounty Electric wants you to?

18           A.       Where is that in the statute?

19                   MR. DUFFY: Your Honor, may I be allowed to  
20 address the Commissioner's question?

21                   COMMISSIONER SCHEMENAUER: It's in the statute  
22 at 386.800, sub 4.

23                   MR. DUFFY: I think I can short cut this if  
24 you'll allow me to speak instead of Mr. Bourne.

25                   JUDGE THOMPSON: I believe the Commissioner's

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1 question is for Mr. Bourne.

2 COMMISSIONER SCHEMENAUER: I'd like him to  
3 answer if he can read the statute. I'm not asking him for a  
4 legal interpretation. I'm just asking from an engineering  
5 viewpoint, would it be possible for them to use power from  
6 Intercounty Electric if they supplied the power?

7 MR. DUFFY: Is the Commissioner asking whether  
8 it's legally possible or whether it's electrically possible?

9 COMMISSIONER SCHEMENAUER: He's an engineer.  
10 So I asked him if it was -- from an engineering viewpoint,  
11 if those electrons could be used just like the electrons  
12 you're buying from UE or wherever you're buying them from?

13 THE WITNESS: I guess that's possible.

14 BY COMMISSIONER SCHEMENAUER:

15 Q. It's a reality, isn't it? I mean, electrons  
16 are electrons?

17 A. Yeah, electricity's electricity.

18 Q. So it doesn't make any difference. The only  
19 question then is whether or not the two parties want to  
20 negotiate?

21 A. (Witness nodded.)

22 COMMISSIONER SCHEMENAUER: That's all I have.

23 JUDGE THOMPSON: Thank you, Commissioner.

24 Commissioner Simmons?

25 COMMISSIONER SIMMONS: I have no questions at

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1 this time.

2 JUDGE THOMPSON: Thank you.

3 QUESTIONS BY JUDGE THOMPSON:

4 Q. Mr. Bourne, does Rolla Municipal Utilities  
5 generate any power?

6 A. Not at this time, no.

7 Q. And so at this time where does Rolla acquire  
8 power?

9 A. Right now we have an all-requirements contract  
10 with AmerenUE.

11 Q. When you say an all-requirements contract,  
12 what does that term mean?

13 A. It means that AmerenUE will provide whatever  
14 power the Rolla utility system requires.

15 Q. I see. And is it my understanding there's  
16 been testimony that that's going to change to a different  
17 supplier?

18 A. That's correct.

19 Q. And when is that change going to occur?

20 A. I believe it's either December 31st of this  
21 year or January 1st.

22 Q. So the change is eminent?

23 A. Eminent, that's correct.

24 Q. And who is the other provider?

25 A. I believe it's MOPEP.

1 Q. As far as you know, the same sort of contract?  
2 A. Yes.  
3 Q. Very good. Do you happen to know if  
4 Intercounty produces any power?  
5 A. I don't know that for sure, no.  
6 Q. Okay. I was asked by Commissioner Drainer to  
7 put some questions to you. In the event that Intercounty is  
8 allowed to keep its existing customers in the annexed area  
9 and Rolla then to build out facilities to serve new  
10 customers, what is Rolla's cost?  
11 A. I'm afraid I need -- costs as what we would  
12 charge a customer to extend our service?  
13 Q. What sort of costs would Rolla incur?  
14 A. Well, in general, the main cost would be  
15 installing poles, guys, conductors, that sort of thing to  
16 get to that customer.  
17 Q. Okay. And this is what has been  
18 characterized, is it not, as a duplication of facilities?  
19 A. In some places, yes, we could get into a  
20 situation where we have a dual system, each system serving  
21 different customers, but generally speaking in the same  
22 general vicinity.  
23 Q. Now, if there is that sort of dual system, is  
24 that a safety hazard?  
25 A. Not necessarily, although as long as

1 everything's built to codes, you try to minimize that safety  
2 issue. But again, in established subdivisions where both  
3 Intercounty and RMU could have systems in place, you're  
4 increasing the congestion that would be there that would not  
5 normally be there if it was just served by a single utility.

6 Q. And when you say built to code, who  
7 promulgates these codes?

8 A. Most of us follow the National Electrical  
9 Safety Code.

10 Q. Okay. And who checks up to make sure you're  
11 following it correctly?

12 A. Normally speaking, it's self-enforced by the  
13 utility, although I'm sure there's probably an inspector out  
14 there somewhere that --

15 Q. Okay. And would it be possible for Rolla in  
16 this situation to rent any facilities from Intercounty?

17 A. I don't know if I'd be qualified to answer  
18 that. I think that question would be better directed to  
19 Mr. Watkins.

20 Q. Well, from an engineering point of view, would  
21 it be possible to rent facilities?

22 A. It might be possible, sure.

23 JUDGE THOMPSON: I think that's all I have.

24 Any further questions from the Bench?

25 Okay. Recross based on questions from the

1 Bench, Mr. Frey?

2 MR. FREY: No questions.

3 JUDGE THOMPSON: Ms. O'Neill?

4 MS. O'NEILL: No questions.

5 JUDGE THOMPSON: Mr. Comley?

6 MR. COMLEY: Thank you, Judge.

7 RECROSS-EXAMINATION BY MR. COMLEY:

8 Q. It was Chair Lumpe that was discussing with

9 you the depreciation approach, and I wanted to straighten

10 out in my own mind some answers that you had about the

11 example. The example that I used dealt with the historical

12 cost of the asset as you recall it; is that correct?

13 A. I believe that's correct.

14 Q. It didn't deal with reproduction new of the

15 particular facility, the substation?

16 A. Yeah. I couldn't see what you were drawing,

17 but yeah, I believe that's correct.

18 Q. I didn't try to draw a substation, let me tell

19 you. But as I understand your testimony, if we have a piece

20 of equipment that the reproduction cost new is \$100,000 and

21 it's been in the field for 35 years and that's the useful

22 life of that facility, then under your understanding of the

23 statute, Intercounty would receive zero for that facility;

24 is that correct?

25 A. I believe that's correct.

1           Q.       Now, if that facility were not 35 years old,  
2 but instead 15 years old, under your approach, would that  
3 facility be priced at 15 years' worth of depreciation --  
4 excuse me -- 20 years' worth of depreciation?

5           A.       I think, again, using my approach, which is an  
6 estimate, I think, using your example, not necessarily, no.

7                   MR. COMLEY: That's all I have.

8                   JUDGE THOMPSON: Thank you, Mr. Comley.

9 Mr. Dunbar?

10                  MR. DUNBAR: No questions.

11                  JUDGE THOMPSON: Redirect, Mr. Duffy?

12                  MR. DUFFY: Thank you.

13 REDIRECT EXAMINATION BY MR. DUFFY:

14           Q.       Let's go back to, I think, Mr. Comley's  
15 earlier cross-examination of you and -- or excuse me, the  
16 Staff's cross-examination. There were some questions about  
17 this discrepancy about a half a mile involving  
18 Mr. Ledbetter. Do you recall that?

19           A.       Yes.

20           Q.       Have you even anything from Mr. Ledbetter in  
21 the last 48 hours on that topic?

22           A.       I don't believe it's been on that particular  
23 topic, no. I think the latest information we received from  
24 Mr. Ledbetter talks about the reintegration of stranded  
25 customers which are currently existing.

1                   With regards to the half mile that we're  
2 talking about, I believe in Mr. Ledbetter's response to a  
3 Data Request, and I believe it was Exhibit JEL-11, I think  
4 he -- excuse me if I get it out.

5                   During one of the -- actually, I stand  
6 corrected. It is the Data Request you're referring to. He  
7 provides an Exhibit JEL-11 which has a line No. 4 which is a  
8 half mile of three-phase, he uses 477.

9                   That is the same -- it's my understanding that  
10 is the same conductor we're talking about in this case where  
11 Mr. Ledbetter's original testimony of one mile and my  
12 surrebuttal testimony that this should have been a half  
13 mile, I believe this is the same line segment that we're  
14 talking.

15           Q.       So is it your understanding, then, that  
16 Mr. Ledbetter has essentially agreed with your position that  
17 it's a half a mile instead of a mile?

18           A.       Based on Exhibit JEL-11, I believe that is  
19 correct.

20           Q.       And this Exhibit JEL-11, how did you come by  
21 that? Was that a response to a Data Request?

22           A.       It was a response to a Data Request.

23           Q.       Is there any remaining dispute about this with  
24 regard to conductor size now? Is that what you were saying?

25           A.       Right. I think the only -- the only thing at

1 issue is whether -- when Intercounty reintegrates their  
2 system, whether or not it should be 477 ACSR or 1 aught.

3 Q. Mr. Comley asked you some questions designed  
4 to show that Shawnee Bend is the same thing as City of  
5 Rolla. Would I be correct if I said that if you went to  
6 Shawnee Bend, that people are building houses on the ridge  
7 tops and the valleys are filled with water because it's at  
8 the Lake of the Ozarks?

9 A. I haven't been to Shawnee Bend, so I couldn't  
10 say that for sure, but I do know that --

11 Q. Let me ask you this. Are you aware that Lake  
12 of the Ozarks is a lake?

13 A. I am.

14 Q. And where is -- where is that lake? It in the  
15 valleys or is it on top of the ridges?

16 A. Obviously the lake is in the valley and the  
17 homes are up on top of the land that's not in the lake.

18 Q. Is there a lake the size of Lake of the Ozarks  
19 inside the city limits of Rolla?

20 A. No, there's not.

21 Q. So would you characterize the terrain at  
22 Shawnee Bend and the Lake of the Ozarks as being similar to  
23 the land inside the city limits of Rolla?

24 A. No, I would not.

25 Q. Mr. Dunbar asked you a question about these

1 113 customers that, even though they've got nothing to do  
2 with this case, seem to be coming up in this case. And his  
3 question to you as I wrote it down in my notes was that he  
4 said, well, maybe RMU didn't want to pay to acquire those  
5 113 customers.

6                   Are you aware of any provision whereby Rolla  
7 could pay to acquire those 113 customers?

8           A.       No, I'm not.

9           Q.       You were asked some questions about the  
10 possibility of a joint use agreement to cover the entire  
11 Southside annexation area. Based on what you know today and  
12 what's going on in this case, do you see any likelihood  
13 whatsoever of a joint use agreement between Intercounty and  
14 Rolla for the entire Southside annexation area?

15          A.       As of today, no. I think there has been  
16 correspondence between myself and Mr. Nelson of Intercounty  
17 trying to put together a joint use agreement that would be  
18 specific for a couple of poles that Intercounty and RMU are  
19 joint with now, and we're trying to rectify an existing  
20 situation.

21                   The idea behind that, I guess, from my  
22 perspective is what we've done is taken a joint use  
23 agreement and tried to make it as, for lack of a better  
24 word, lean and mean as far as just addressing the situation  
25 and the -- trying to address the situation that we have



1 today on a couple of poles and trying to get to a point  
2 where we can agree on some of the issues that would be  
3 involved in a joint use agreement.

4           But right now, there is not -- there's not a  
5 joint use agreement being negotiated that would apply to the  
6 entire Southside area.

7           Q.     You were asked some questions from the Bench  
8 about the, I guess, potential disadvantages of having a  
9 duplicate system or dual system of overhead electric lines  
10 in these subdivisions, and I believe you said that there  
11 were aesthetic concerns. You said that there were safety  
12 concerns.

13           Are there any economic impacts on the general  
14 public from having two systems in the same location?

15           A.     There's some, because obviously, you know, RMU  
16 is a public utility. Intercounty is a public utility. And  
17 ultimately the ratepayers of both utilities are going to be  
18 paying for these improvements or any improvements that get  
19 made.

20           And by having dual systems in an area,  
21 basically you're having Intercounty paying for a system and  
22 RMU paying for a system, and economically it doesn't make as  
23 much sense as having only a single provider provide that  
24 power supply.

25           Q.     With overhead lines in the backyard and

1 overhead lines in the front yard, the possibility, does that  
2 in your opinion increase the potential for, let's say, kids  
3 flying kites into lines or people sticking CB antennas into  
4 lines or things like that? Is that increased in that  
5 situation or decreased?

6           A.       It potentially could increase. I think we've  
7 already seen, and again referring to some of the letters  
8 that I've seen from the one person in particular in the  
9 Southside where he's already addressed his concerns about  
10 having conductors in the front yards, conductors in the  
11 backyards, and frankly he wasn't very excited about the  
12 prospect.

13          Q.       If there are two systems there, does that  
14 increase the potential for vehicles hitting the poles?

15          A.       That potential could increase, yes.

16          Q.       Commissioner Schemenauer was asking you  
17 about -- he quoted from a statute, and I just made some  
18 notes here about the municipality may extend its system. To  
19 your knowledge, was he quoting from 386.800 involving this  
20 proceeding or was he quoting from the flipflop statutes?

21          A.       I didn't -- as was looking through my 386.800,  
22 I could not see that particular clause that he was referring  
23 to.

24          Q.       When you -- I think you've testified that it's  
25 your understanding that the City is required to serve new

1 customers in the annexation area and that the coop cannot  
2 serve new customers in the annexation area.

3           Is it your understanding that that's the  
4 result of 386.800 or is that a result of the flipflop  
5 statute, if you know?

6           A.       I'm not sure I know the answer to that  
7 question.

8           Q.       Do you know in regard to Commissioner  
9 Schemenauer's question about supplying power whether or not  
10 that was a topic that was negotiated or was it subject to  
11 negotiation in the territorial agreement discussions, or is  
12 that something that its time has passed?

13          A.       I'm not aware of that, no. I was not involved  
14 in the negotiations. I couldn't say one way or another  
15 whether that was discussed.

16               MR. DUFFY: That's all the questions I have at  
17 this time.

18               JUDGE THOMPSON: Thank you, Mr. Duffy.

19               We'll take a recess and be back at ten minutes  
20 after three.

21               (A RECESS WAS TAKEN.)

22               (EXHIBIT NO. 20 WAS MARKED FOR IDENTIFICATION  
23 BY THE REPORTER.)

24               (Witness sworn.)

25               JUDGE THOMPSON: Please be seated. Spell your

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1 name for the reporter, if you would.

2 THE WITNESS: My name is Dan Watkins, D-a-n,  
3 W-a-t-k-i-n-s.

4 JUDGE THOMPSON: Commissioner Schemenauer has  
5 a statement for the record before we proceed.

6 COMMISSIONER SCHEMENAUER: I just wanted the  
7 record to show that the quote that I made from 386.800 was  
8 from the current statute that was passed under Senate  
9 Bill 221 in 1991. It's not a flipflop statute. It's the  
10 real thing.

11 JUDGE THOMPSON: Thank you, sir. Please  
12 proceed, Mr. Duffy.

13 DAN WATKINS testified as follows:

14 DIRECT EXAMINATION BY MR. DUFFY:

15 Q. Would you state your name for the record,  
16 please.

17 A. Dan Watkins.

18 Q. Are you the same Dan Watkins that caused to be  
19 filed what's been identified as Exhibit No. 5, your prepared  
20 direct testimony; Exhibit No. 6, your prepared rebuttal  
21 testimony; and Exhibit No. 7, your prepared surrebuttal  
22 testimony; and what's been marked for purposes of  
23 identification as Exhibit 20, being some errata sheets to  
24 your surrebuttal testimony?

25 A. I am.

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1           Q.       Do you have any changes or corrections to  
2 those documents other than the ones that are reflected on  
3 what's been marked as Exhibit 20?

4           A.       Yes, I do.

5           Q.       Would you tell me what those are, please.

6           A.       First of all, I guess I would point out, as  
7 has been done previously, that the direction that RMU has  
8 taken after the rebuttal testimony was received from  
9 Intercounty is somewhat different than what we had done in  
10 our direct testimony, and so that there will be some things  
11 or change of positions from the direct testimony that now do  
12 not apply.

13                   The next item that I have is in my direct  
14 testimony. I believe it's Exhibit No. 5, page 19. Let me  
15 get to that before I proceed. Beginning with the second  
16 sentence on line 5, I would delete beginning with, Even  
17 though the particulars, ending on line 8, in the future. I  
18 would strike that sentence.

19                   JUDGE THOMPSON: Okay.

20                   MR. COMLEY: You're striking from line 5 to  
21 line 8?

22                   THE WITNESS: The second -- beginning with the  
23 second sentence on line 5 that starts with, Even though the  
24 particulars.

25                   MR. COMLEY: All right.

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1 THE WITNESS: And ends on line 8 with, In the  
2 future.

3 MR. DUFFY: It's the same thing we said we  
4 were going to in the pleading.

5 MR. COMLEY: Okay.

6 THE WITNESS: I would also point out on  
7 line 15 that the actual reserve account for RMU is  
8 approximately 7.3 million instead of the 6.5 as was at the  
9 time.

10 JUDGE THOMPSON: Very good.

11 THE WITNESS: Then my surrebuttal testimony,  
12 which I believe is marked as Exhibit No. 7, and I think this  
13 is included on the errata sheet. The dollar amount changed  
14 on page 4, line 13. So that's on the errata sheet as well.

15 JUDGE THOMPSON: Just so that I can be clear,  
16 what is the change exactly?

17 THE WITNESS: The dollar amount on line 13,  
18 the \$1,299,473 changes to \$1,285,210.

19 JUDGE THOMPSON: Thank you.

20 THE WITNESS: You're welcome.

21 The next thing I have is on page 6, beginning  
22 with line 17, and this is with regard to -- I have a  
23 discussion there for the next couple of pages about  
24 Mr. Priest's authority to speak for others.

25 Since this testimony was filed, we have

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1 received updated information from some of the members of the  
2 Southside Neighbors, and I guess I would just like to  
3 acknowledge that we did receive that and that it, you know,  
4 it's in addition. And some of the other people were  
5 actually saying that he did have authority to speak for  
6 them. So I just wanted to recognize that.

7 JUDGE THOMPSON: Okay.

8 THE WITNESS: On page 15, on line 14, the  
9 sentence that begins with, There was an understanding, I  
10 would like to more directly correct that sentence and say,  
11 The City's understanding was, striking there was an  
12 understanding reached with, and beginning of the sentence  
13 would be, The City's understanding was.

14 BY MR. DUFFY:

15 Q. Why don't you go ahead and read that sentence  
16 as you want it to appear?

17 A. Okay. The City's understanding was that  
18 Intercounty would voluntarily provide services and make  
19 contributions to the City similar to what RMU does.

20 Q. Do you have any other changes?

21 A. I do. I think on page 48 -- actually, no, I  
22 don't.

23 Q. If I asked you the same questions that appear  
24 in Exhibits 5, 6 and 7, with the changes that you've just  
25 made and the changes reflected in Exhibit 20, would your

1 answers be the same as they appear therein?

2           A.       Yes, they would.

3           Q.       Are those answers true and correct to the best

4 of your knowledge, information and belief?

5           A.       Yes, they are.

6                   MR. DUFFY: Your Honor, at this time I would

7 offer into evidence Exhibits 5, 6, 7 and 20 and tender the

8 witness for cross-examination.

9                   JUDGE THOMPSON: Thank you, Mr. Duffy. Do I

10 hear any objections to the receipt of Exhibits 5, 6, 7 and

11 20?

12                  MR. COMLEY: Intercounty has objections, your

13 Honor.

14                  JUDGE THOMPSON: To which ones?

15                  MR. COMLEY: To all three.

16                  JUDGE THOMPSON: Okay. State your objection.

17                  MR. COMLEY: Starting with the direct

18 testimony of Mr. Watkins, which has been marked as

19 Exhibit 5, page 4, line 7 through 10, the testimony there

20 says that we have been careful to take well-thought-out,

21 reasonable and practical positions on potential issues,

22 et cetera.

23                  I'm talking about that point -- testimony that

24 ends the first part of line 10. It ends with the word

25 forefront. That testimony is self-serving. It is



1 conclusionary and it's not relevant to the facts. We  
2 propose that it be stricken.

3 JUDGE THOMPSON: Well, I would be surprised if  
4 they put in prefiled testimony that was not self-serving.  
5 I'm not going to strike that testimony. I think that it  
6 says what it says.

7 MR. COMLEY: Page 16, lines 18 through 20,  
8 Mr. Watkins states, The General Assembly obviously  
9 recognized that municipal electric systems should have the  
10 right to buy out cooperative electric facilities.

11 I think lines 18 down to 20, ending with the  
12 word public interest, the words public interest on line 20,  
13 that is beyond the competency of the witness. It's legal  
14 argument. It's far beyond Mr. Watkins's qualifications.  
15 It's really a matter for the Commission to decide, and it  
16 should be stricken.

17 JUDGE THOMPSON: Mr. Duffy?

18 MR. DUFFY: I would simply observe that, as  
19 Mr. Comley observed, almost every witness in this proceeding  
20 is telling the Commission what they think the General  
21 Assembly is doing or what the statutes provide. This is an  
22 administrative proceeding, and I think everybody's entitled  
23 to comment what they think the parameters that we're  
24 operating under are.

25 MR. COMLEY: Judge, I can go so far as to

1 allow people to talk about the statutes in their testimony,  
2 but then to go the extra distance and say what the General  
3 Assembly obviously intended or the General Assembly  
4 obviously knew, that's going a little too far.

5 JUDGE THOMPSON: We'll go ahead and strike  
6 lines 18 through 20 on page 16 of Mr. Watkins's prepared  
7 direct testimony.

8 MR. COMLEY: On page 17, lines 13 through 14,  
9 again Mr. Watkins says something about the General Assembly  
10 obviously considering something, and I would move that it be  
11 stricken on the same grounds that I offered -- I moved to  
12 strike the earlier selection on page 16.

13 MR. DUFFY: Your Honor, he's talking about the  
14 four times annual revenue, and he's simply commenting that  
15 obviously the General Assembly considered this to be an  
16 amount sufficient to fairly compensate for loss of property,  
17 otherwise it would have used some different number. I don't  
18 see why -- he's saying this is what the General Assembly  
19 did.

20 JUDGE THOMPSON: Well, Mr. Duffy, I'll let you  
21 put that in your Brief. We'll go ahead and strike the  
22 sentence in question.

23 MR. COMLEY: Turning to the surrebuttal,  
24 Exhibit 7, page 8, lines 21 through 22, there's a sentence  
25 that says, I'd like to be charitable, but that's just about

1 the craziest thing I've heard lately.

2                   This is a characterization of another witness'  
3 testimony and an opinion about the credibility of the  
4 witness. It is not relevant to Mr. Watkins's testimony. It  
5 is not relevant whether he's to be charitable or whether  
6 some things are crazy, and I think it should be stricken.

7                   JUDGE THOMPSON: Well, it appears to me that  
8 Mr. Watkins is expressing strong disagreement with the  
9 testimony in question. I will not strike that.

10                  MR. COMLEY: On page 19, lines 2 through 5,  
11 Mr. Watkins is describing his understanding of the intent of  
12 the section, and again I think that is beyond his  
13 qualifications and it should be stricken. And I'm thinking  
14 about lines 2 through 5, ending at the end of the sentence  
15 there in line 5. It ends with the words prior to the  
16 transfer.

17                  JUDGE THOMPSON: Mr. Duffy?

18                  MR. DUFFY: Judge, you're doing a fine job.  
19 I'm just going to let you wing it on your own.

20                  JUDGE THOMPSON: Thank you, sir. I will go  
21 ahead and strike this. It looks to me like legal argument.  
22 I'll expect to see it in the Brief.

23                  MR. COMLEY: On page 25, lines 15 through 22,  
24 Mr. Watkins states, If you accept that as a fact and then  
25 further consider a statistical presentation prepared in

1 November 1999 by the American Public Power Association  
2 Department of Statistical Analysis based on 1998 data  
3 submitted to the U.S. Department of Energy, Energy  
4 Information Administration, et cetera.

5                   And it's referring, I think, to a statistical  
6 presentation, but this is hearsay. There is no foundation  
7 for its use. And this goes on to page 26, lines 1 through  
8 4. I would move to strike any reference to that statistical  
9 presentation absent foundation for that and anything upon  
10 which Mr. Watkins -- any testimony Mr. Watkins states in  
11 reliance upon that.

12                   JUDGE THOMPSON: Mr. Duffy?

13                   MR. DUFFY: Well, I will come in on this one.  
14 I think Mr. Watkins is entitled to quote from public  
15 documents. Mr. Comley was entitled to request a copy of  
16 that if he wanted to see what the source material was so he  
17 could ask cross-examination.

18                   I don't think it is appropriate to strike the  
19 material simply because Mr. Watkins is referring to some  
20 sort of published document that he's relied upon in reaching  
21 his conclusion.

22                   MR. COMLEY: Judge, there's no foundation for  
23 the accuracy of that. No official or judicial notice is  
24 requested for that document. It's unclear whether official  
25 or judicial notice can be taken of this document. It's

1 hearsay. So far there's no foundation for the use of that  
2 hearsay source.

3 MR. DUFFY: Well, he's testifying as an expert  
4 on this, and an expert's entitled to rely on hearsay  
5 material if he wants to.

6 MR. COMLEY: Still there's no foundation for  
7 the use of that, Judge.

8 JUDGE THOMPSON: Mr. Duffy's correct that an  
9 expert is entitled to rely on hearsay, and the hearsay can  
10 then come in, not in order to prove the matter therein  
11 asserted, but rather to demonstrate what it is the expert  
12 has relied upon.

13 Now, Mr. Duffy, is that how you have intended?  
14 Is that how the witness has intended to use this material  
15 here?

16 MR. DUFFY: I wouldn't -- I'd hesitate to  
17 speak on behalf of what the witness intended. You'd have to  
18 ask the witness that.

19 JUDGE THOMPSON: I apologize. We've had so  
20 much talk about what the General Assembly intended. I  
21 thought perhaps you could speak to what the witness  
22 intended.

23 THE WITNESS: Yes is the answer to your  
24 question. I'm sorry.

25 JUDGE THOMPSON: We will let this in only in

1 order to demonstrate what the witness relied upon, but not  
2 in order to prove the facts therein asserted.

3 Anything else, Mr. Comley?

4 MR. COMLEY: On page 26, lines 12 to 14,  
5 starting with the second sentence in line 12, that means to  
6 me that the General Assembly intended for the buying entity  
7 to pay 400 net amount of the revenue coming to the selling  
8 entity.

9 Again, it's commentary about the intention of  
10 the General Assembly. It's more legal argument. It is  
11 beyond the qualifications of the witness, and the Commission  
12 should strike it.

13 JUDGE THOMPSON: Mr. Duffy?

14 MR. DUFFY: Well, I don't think it's beyond  
15 the qualifications of the witness because previously he  
16 testified that he uses the statutes in almost daily use and  
17 relies upon them and interpreting them. As to whether he's  
18 infringing upon the intent of the General Assembly, I leave  
19 that to your discretion, your Honor.

20 JUDGE THOMPSON: I'll go ahead and strike it.  
21 I think I've struck one or two other passages that are  
22 similar. Anything else, Mr. Comley?

23 MR. COMLEY: Yes. On page 27, lines 14  
24 through 16 -- 14 through 17. 14 through 17. It starts the  
25 second sentence on that line 14, I can't imagine that

1 Mr. Strickland will claim that this office building and  
2 warehouse will become obsolete if 286 customers in the  
3 annexed area, along with the wires and poles actually being  
4 used to serve them, are transferred to RMU as a result of  
5 this case.

6 I don't think it's relevant about whether or  
7 not Mr. Watkins can imagine things. It does not deal with  
8 any facts upon which the Commission will base its decision.  
9 Whether he will or cannot imagine things is irrelevant. It  
10 should be stricken.

11 MR. DUFFY: Your call, your Honor.

12 JUDGE THOMPSON: Thank you, Mr. Duffy. I  
13 believe that is within the scope of proper surrebuttal. I'm  
14 not going to strike that. What else?

15 MR. COMLEY: Page 28, lines 10 through 13,  
16 second sentence there, Mr. Watkins testifies, I think it is  
17 ridiculous to pursue the topic that RMU should have to buy  
18 Intercounty's office building and pay all the costs of  
19 relocating their communications facilities now inside the  
20 building just because it happens to be located in the  
21 annexed area so RMU can provide electric service to 286  
22 customers inside the city limits.

23 I take issue with the witness' referral to  
24 something that is ridiculous. His opinion of what is  
25 ridiculous is not relevant in the case.

1 JUDGE THOMPSON: I agree. We'll strike that.  
2 Anything else, Mr. Comley?

3 MR. DUFFY: Did we strike the whole sentence  
4 or did we strike his opinion that something was ridiculous?

5 JUDGE THOMPSON: Well, if we just strike I  
6 think it is ridiculous, then that doesn't leave much  
7 sentence.

8 MR. DUFFY: I'm just trying to make sure I  
9 understand what the ruling was.

10 JUDGE THOMPSON: We'll strike that whole  
11 sentence.

12 MR. COMLEY: Page 28, line 17 through 18,  
13 Mr. Watkins states in the second sentence starting on line  
14 17, I don't think the General Assembly intended to force a  
15 municipality into ridiculous situations. As far as I can  
16 tell, Intercounty can enter into lots of different types of  
17 businesses such as satellite TV, Internet services and  
18 propane dealerships.

19 Excuse me. I think I ran a little long. It  
20 was -- I object to the point that says, I don't think the  
21 General Assembly intended to force a municipality into  
22 ridiculous situations. Again, what the General Assembly  
23 intend is beyond the qualifications of the witness, and it  
24 should be stricken.

25 JUDGE THOMPSON: Well, I think that sentence



1 just about repeats line for line a rule of statutory  
2 construction that I've seen more than once, but it is a  
3 legal argument and I think it should be in the Briefs, so  
4 we'll strike it from the witness' testimony.

5 MR. COMLEY: Page 30, line 18 through 19,  
6 second sentence on line 18, I don't know why he feels the  
7 need to make a strong statement about the obvious situation.

8 What Mr. Watkins does not know is not relevant  
9 to the case and should be stricken.

10 JUDGE THOMPSON: Just a moment while I read  
11 the context here.

12 I'm going to let that one stand. Next.

13 MR. COMLEY: Page 37, line 4, the portion that  
14 I object to is after the comma following the word be, But it  
15 doesn't tend to prove or disprove any issue in this case. I  
16 think that's argumentative. What Mr. Watkins believe has  
17 been proved or disproved in the case is not relevant.

18 JUDGE THOMPSON: We will strike the phrase,  
19 But it doesn't tend to prove or disprove any issue in this  
20 case. Page 37, line 4.

21 Anything else, Mr. Comley?

22 MR. COMLEY: Yes. On page 38, lines 4 through  
23 10. In this selection Mr. Watkins is talking about a matter  
24 of information. He claims that Intercounty became very  
25 active in trying to organize and promote the formation of a

1 water district that was much larger than the annexation area  
2 and included it. He goes on to testify, I believe the  
3 reason Intercounty did that was to impede the City's ability  
4 to annex the area or, failing that, to slow or stop the City  
5 from serving the area with water and sewer service, thereby  
6 stopping the City's infrastructure growth. Intercounty  
7 provided tens of thousands of dollars in that endeavor.

8                   There is no foundation for what he's claiming.  
9 There is no effort to show how this witness has any direct  
10 knowledge of what he is testifying to at lines 4 through 10.

11                   MR. DUFFY: Your Honor, he can inquire about  
12 that on cross-examination.

13                   JUDGE THOMPSON: That's exactly what I was  
14 going to say.

15                   MR. COMLEY: Also, it's irrelevant and  
16 immaterial to the case.

17                   MR. DUFFY: It's not irrelevant and  
18 immaterial, your Honor, because it tends to prove why we're  
19 having this dispute.

20                   MR. COMLEY: I don't see the connection  
21 between formation of a water district and why an application  
22 for filed for exclusive territories in this case.

23                   JUDGE THOMPSON: Well, I'll let you explore  
24 that on cross. Anything else?

25                   MR. COMLEY: Page 39, line 21, first sentence,

1 I am really surprised at his remark and offended at the  
2 implications.

3 JUDGE THOMPSON: We'll strike that sentence.  
4 I believe that's impertinent.

5 MR. COMLEY: On page 42, line 4, If I  
6 understand this correctly, this could be the most foolish  
7 assertion introduced in this case to date.

8 JUDGE THOMPSON: I believe that's an improper  
9 characterization. We'll strike that.

10 MR. COMLEY: Page 42, lines 14 through 17,  
11 starting with the second -- the third sentence on line 14, I  
12 think I can make a case that Intercounty should have to pay  
13 a premium to the leading members. That whole sentence down  
14 to the line 17 termination of that sentence.

15 Witnesses should not be able to make cases in  
16 their testimony. It is reserved for those -- for the facts  
17 upon which the case rests and it shouldn't be -- the  
18 attorneys will make cases from those facts.

19 JUDGE THOMPSON: I believe that's proper. I'm  
20 not going to strike it. Anything else?

21 MR. COMLEY: Page 43, lines 4 through 10,  
22 starting with the second sentence on line 4, I think the  
23 General Assembly was completely aware of the notion that  
24 utilities have mortgages when they drafted the statute.

25 Again, that's beyond the witness'

1 qualifications to talk about the General Assembly's  
2 awareness of things. If that is a matter to be considered,  
3 it should be a matter for the Briefs and not in the  
4 testimony.

5 MR. DUFFY: Your Honor, there are statutes  
6 dealing with utility mortgages if that helps you in your  
7 determination.

8 JUDGE THOMPSON: I'll go ahead and strike  
9 those lines.

10 MR. COMLEY: I have one more objection, Judge,  
11 and it's to the prepared rebuttal of Mr. Watkins. It would  
12 be Exhibit 6. It's page 3, lines 9 through 10.

13 MR. DUFFY: What's the citation again?

14 JUDGE THOMPSON: This is Exhibit No. 6,  
15 page 3, lines 9 and 10. I think it is presumptuous for  
16 Mr. Priest to assume that everyone that attended the public  
17 meeting was there only to assert that they wanted the  
18 Commission to deny Rolla's request for exclusive service  
19 territory in the Southside annex area. It actually runs  
20 through the beginning of page 4.

21 MR. COMLEY: Yes. I'm sorry. It would be  
22 lines 9 through 12. I think it's -- I think it's  
23 presumptuous for the witness to be presumptuous, and for him  
24 to accuse another witness of being presumptuous, the other  
25 parties been quiet about the proposed -- the other witnesses

1 have been quiet about the presumptuousness of everybody  
2 else's testimony, and I think Mr. Watkins should as well.  
3 It should be stricken.

4 JUDGE THOMPSON: I'm not going to strike this  
5 one. Anything else?

6 MR. COMLEY: That's all.

7 JUDGE THOMPSON: Thank you, sir. Subject to  
8 the objections we have heard from Mr. Comley, Exhibits 5, 6,  
9 7 and 20 are received and made a part of the record of this  
10 proceeding.

11 (EXHIBIT NOS. 5, 6, 7 AND 20 WERE RECEIVED  
12 INTO EVIDENCE.)

13 JUDGE THOMPSON: Cross-examination. Mr. Frey,  
14 I believe you're first.

15 MR. FREY: Thank you, your Honor. Just a few  
16 questions of Mr. Watkins.

17 CROSS-EXAMINATION BY MR. FREY:

18 Q. The parties in this case have expressed some  
19 concern about the change of intent of RMU concerning  
20 acquiring the Intercounty customers. Can you state when RMU  
21 did decide to seek to acquire the Intercounty customers in  
22 the annexed area?

23 A. The decision was made right after the  
24 annexation.

25 Q. I believe I heard in previous testimony today,

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1 it was mentioned 38 days or something after the --  
2 A. That could be right.  
3 Q. Is that about right?  
4 A. That could be right. I don't know. I didn't  
5 count them.  
6 Q. RMU has signed a new power supply agreement  
7 which will become effective at the beginning of the next  
8 year, it's been mentioned. That's correct, is it not?  
9 A. Yes, it is.  
10 Q. Will that power supply agreement be subject to  
11 varying market conditions that might affect Rolla's  
12 wholesale electric rates and possibly retail electric rates?  
13 A. Can we separate the question? I think there  
14 are actually two there, aren't there?  
15 Q. Wholesale and retail you mean?  
16 A. Yes.  
17 Q. Okay.  
18 A. Obviously there are things in the pooling  
19 arrangement that could affect wholesale power costs plus or  
20 minus. I think that those will be a wash.  
21 Q. You mean as to wholesale power?  
22 A. As to our new wholesale power supply cost as  
23 opposed to our previous.  
24 Q. Okay. What about the retail electric rates?  
25 A. Obviously if there is no real difference in

1 the net wholesale power supply cost, then retail rates would  
2 have no effect.

3 Q. Thank you. Should the Commission approve the  
4 transfer of Intercounty customers to RMU, do you anticipate  
5 a lump sum payment for the facilities and reasonable costs?

6 A. I suppose I would prefer that it would be the  
7 cost -- the dollars change hands at the appropriate times  
8 whenever the assets did. However, I do view that as being  
9 completely within the purview of the Commission.

10 Q. On page 26 of your surrebuttal testimony, if  
11 you could turn there, I believe you quantify an amount,  
12 about \$78,000, to reduce the actual revenue for the 12-month  
13 period prior to annexation is that correct?

14 A. Yes, sir.

15 Q. And could you clarify how you came about this  
16 adjustment, how you arrived at it?

17 A. Yes, sir. I pretty much tried to explain that  
18 in the previous page. Would you like for me to read that  
19 or --

20 Q. No. Maybe we could just -- as I understand  
21 it, it has to do with the discounts or capital credits; is  
22 that correct?

23 A. Yes, sir. In Mr. Strickland's, one of his  
24 exhibits, he basically made an issue that there was really  
25 not much of a rate disparity between the City's system and

1 the Intercounty system. And so if you assume that to be  
2 true, and what I did is I was looking for the best available  
3 information that I could, could get my hands on, that seemed  
4 to be standardized reporting form, the EIA-861 which all  
5 utilities, Intercounty and Rolla Municipal, all file with  
6 the Department of Energy, to determine what the net  
7 disparity between the two systems were.

8                   And so if you assume that the exhibit is true  
9 and correct, then the disparity between those two rates  
10 seems to be the patronage or capital credits.

11                   MR. COMLEY: I renew my objection to the use  
12 of that. I think the testimony is that he's using it for  
13 purposes of the truth asserted in that document. It's  
14 hearsay.

15                   MR. DUFFY: But, your Honor, he's now been  
16 asked a question about that.

17                   MR. COMLEY: I think he's just gone far beyond  
18 the use to which it's being put, Judge. For the record, my  
19 objection is renewed.

20                   JUDGE THOMPSON: Very good. Objection  
21 overruled. Proceed.

22                   MR. FREY: Thank you, your Honor.

23 BY MR. FREY:

24           Q.       So the amount proposed by RMU will continue to  
25 constitute 400 percent of gross revenues -- excuse me, yeah,



1 gross revenue less gross receipts tax is actually net of  
2 discounts and capital credits; is that correct?

3 A. Yes.

4 Q. As you've computed it. And what is your  
5 definition of gross revenues, then?

6 MR. DUFFY: Excuse me. Mr. Frey, could you  
7 speak into the microphone? I'm having a hard time hearing.

8 MR. FREY: I'm sorry.

9 BY MR. FREY:

10 Q. What, then, is your definition of gross  
11 revenues?

12 MR. DUFFY: Is your microphone on? I'm still  
13 having a hard time.

14 MR. FREY: Yes, it is. It's off. Does  
15 anybody know how to turn it on? Thanks, Mark.

16 BY MR. FREY:

17 Q. What is your definition of gross revenues?

18 A. The gross revenues as I would define it is the  
19 net amount that the customers in the area paid in the  
20 preceding 12 months.

21 Q. So your understanding of the meaning of gross  
22 revenues is that such revenues are be net of capital credits  
23 and discounts, correct?

24 A. Yes. I would say that's part of the  
25 normalization process.

1 Q. Are there any gross receipts taxes at issue in  
2 this calculation?

3 A. Not to my knowledge.

4 Q. So when the statutory language authorizes  
5 removal of gross receipts taxes from gross revenue, are you  
6 saying that you interpret that as simply opening the door  
7 for removal of other amounts from gross revenues, such as  
8 capital credits?

9 A. I think I see it as an example of what was,  
10 you know, what was intended, yes.

11 Q. Thank you.

12 Just one more question area, Mr. Watkins.  
13 From your perspective, how far apart are we on some of these  
14 costs? For example, the reproduction cost depreciation, can  
15 you comment on that as to whether or not you think the two  
16 primary parties are close or just where the nub of the  
17 disagreement is or just where do you feel we are?

18 A. I guess my score card is such that the City of  
19 Rolla, RMU, is close to a similar number as to what Staff  
20 has recommended and that there is a wide disparity between  
21 the City of Rolla and RMU and Intercounty Electric.

22 Q. As to both reproduction cost and depreciation;  
23 is that correct?

24 A. Can we revisit the numbers here?

25 Q. Yeah. I believe just a ballpark figure on the

1 reproduction costs between Rolla and Intercounty was about a  
2 quarter of a million dollars. Does that sound -- does that  
3 sound about right?

4           A.       I would accept that if that's what you're  
5 telling me. I think where the big disparity there comes  
6 from is in the depreciation.

7           Q.       Okay. Let's go on. How about on the revenues  
8 end, the 400 percent of the gross revenues, would it be  
9 correct to say that the big difference right now has to do  
10 with the fact that you subtracted these capital credits from  
11 a figure that, I guess, Staff and Intercounty are using  
12 right now? Is that kind of the big discrepancy in those  
13 numbers, the 400 percent of --

14          A.       Yes.

15          Q.       -- revenues?

16                   And in detachment and integration, is there  
17 anything in particular that stands out for you?

18          A.       No, sir, other than I think we used  
19 Intercounty's numbers in every instance that we could.  
20 However, there was -- there was a little bit of methodology  
21 that was changed, and I think Mr. Bourne has already  
22 testified to that.

23                   MR. FREY: Okay. Thank you. I have no  
24 further questions, your Honor. Thank you.

25                   JUDGE THOMPSON: Thank you, Mr. Frey.

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1 Ms. O'Neill?

2 MS. O'NEILL: Thank you, your Honor.

3 CROSS-EXAMINATION BY MS. O'NEILL:

4 Q. Mr. Watkins, I want to refer you to your  
5 surrebuttal testimony at page 15. You'd indicated that you  
6 made a change to your testimony there; is that correct?

7 A. Yes, ma'am.

8 Q. And that's in regard to the Annexation Plan of  
9 Intent?

10 A. It's with regard to the understanding that the  
11 City had.

12 Q. Okay. And that's in the section that's headed  
13 Annexation Plan of Intent, correct?

14 A. Yes, ma'am. It's on line 14 where I changed  
15 that.

16 Q. The change that you made was that the City's  
17 understanding was that Intercounty would voluntarily provide  
18 services and make contributions to the City similar to what  
19 RMU does; is that correct?

20 A. Yes, ma'am.

21 Q. Can you tell me first of all, what was the  
22 basis of that understanding?

23 A. I'd have to take you back several years, and I  
24 guess my recollection is that shortly after Mr. Strickland  
25 was hired with Intercounty, I believe it was in 1992, I

1 called him. RMU hosted a lunch meeting. He brought, I  
2 think, some staff with him. And it was for the express  
3 purpose of discussing territorial issues and those kinds of  
4 things.

5                   From that, shortly after that, and I guess the  
6 next thing that I remember was a document that was proposed  
7 by Intercounty to the City of Rolla. It was a territorial  
8 agreement, and it even proposes, it actually says, as I  
9 remember it, it says that Intercounty agrees with the City  
10 that the City has the right to impose a franchise fee or  
11 gross receipts tax.

12           Q.       Was there anything in your understanding that  
13 they had agreed to pay such a tax or franchise fee?

14           A.       There was nothing in writing. It was just it  
15 was a conceptual understanding in discussions with the City.  
16 And like I said, it started back as early at '92, '94, and  
17 continued right on up to the time of the annexation.

18           Q.       And would it be fair to say that you  
19 personally thought that that's what those discussions meant?

20           A.       That is an accurate statement. Also, it is  
21 accurate that I -- that I balanced that with the question to  
22 city administration that we currently have, and he agreed  
23 with me as to my understanding.

24           Q.       Was that understanding that at least you and  
25 the City of Rolla had, whether or not Intercounty had that

1 understanding, was that addressed in your Plan of Intent?

2           A.       Yes, and that's why the Plan of Intent reads  
3 the way that it does. I mean, it was categorically not the  
4 City's intent at the time to make this filing.

5           Q.       We had some testimony earlier today about  
6 money that goes from RMU to the City of Rolla. In the  
7 sentence following the sentence where your change is,  
8 actually at the end of that sentence, you refer to  
9 contributions being made to the City similar to what RMU  
10 does.

11                   It is my understanding that there is both an  
12 administration fee and some other transfers that are  
13 separate from that administration fee currently with RMU and  
14 the City of Rolla; is that correct?

15           A.       Well, let me explain what I meant when I said  
16 to the City similar to what RMU does.

17           Q.       If you would first answer the question that I  
18 asked you.

19           A.       I'm sorry. Would you please restate it?

20           Q.       Okay. It's my understanding that there's an  
21 administration fee that's a transfer to the City of Rolla;  
22 is that correct? I'll break it up for you. Maybe that's  
23 easier.

24           A.       Actually, any dollars that are transferred  
25 from RMU to the City of Rolla are administrative fees. I

1 mean, there's no distinction as far as Rolla is concerned,  
2 as far as RMU is concerned. Excuse me.

3 Q. Okay. But it was my understanding from the  
4 prior testimony that that is not a set percentage, but  
5 rather there may be a set percentage of, for example -- I  
6 don't know if this is right -- 5 percent, but then there may  
7 be other transfers as well during the course of the year; is  
8 that correct?

9 A. Actually, there is a -- there is a set  
10 quarterly payment, and yes, the city council can make  
11 requests of RMU independent of that, yes.

12 Q. When you're talking about similar  
13 contributions to what RMU does, was that contemplation that  
14 that would include, in addition to the quarterly payments  
15 RMU currently makes, those other transfers?

16 A. No, ma'am. The conversations that were had  
17 between city administration, RMU and Intercounty essentially  
18 we're talking about a percentage of gross receipts. I  
19 further included in this things like street lighting at no  
20 additional charge to the City, which is a service that RMU  
21 provides.

22 Q. But as far as any finalization, there had been  
23 no finalization of those types of plans?

24 A. No, ma'am.

25 Q. Either prior to the annexation or subsequent

1 to the annexation but prior to the City of Rolla filing this  
2 application, had there been discussions with Intercounty  
3 about a joint use agreement regarding, for example, their  
4 poles?

5           A.       Yes, ma'am.

6           Q.       And was such a joint use agreement ever agreed  
7 upon?

8           A.       No.

9           Q.       Were there other discussions undertaken  
10 between the City of Rolla and Intercounty regarding a  
11 territorial type agreement where there would be an agreement  
12 that Intercounty would continue to serve people in the  
13 affected area under some other -- under some other  
14 conditions?

15                   MR. DUFFY:  When you say were there other  
16 discussions, what's the primary frame of reference?  Are you  
17 talking about the negotiations mandated under the statute  
18 and discussions other than those?

19 BY MS. O'NEILL:

20           Q.       The question that I'm asking right now is  
21 whether or not there were discussions regarding an  
22 inter-utility -- I realize when I use Intercounty -- a  
23 territorial agreement regarding service territories between  
24 the two utilities?

25           A.       Well, as I testified a minute ago, RMU was



1 interested in pursuing a territorial agreement as early as  
2 1992 with Intercounty. We had a couple of discussions and  
3 were unable to make any progress on that.

4 Obviously after we made the 386.800 filing we  
5 did, I feel like, meet all of the statutory requirements to  
6 negotiate and explore that was a possibility.

7 MS. O'NEILL: I don't have any further  
8 questions. Thank you.

9 JUDGE THOMPSON: Thank you, Ms. O'Neill.  
10 Mr. Comley?

11 MR. COMLEY: Thank you, Judge.

12 CROSS-EXAMINATION BY MR. COMLEY:

13 Q. I talked about everybody's background, so I  
14 thought I'd do with the same with you, Mr. Watkins. I  
15 understand that you've been general manager of RMU since  
16 1992; is that correct?

17 A. That is correct.

18 Q. That's what you said as well earlier. Prior  
19 to that time, you had been employed with RMU, had you not?

20 A. Yes.

21 Q. And you'd been operations manager?

22 A. Yes.

23 Q. And as far as your education, do you have a  
24 degree from a college?

25 A. No, I do not.

1 Q. Do you classify yourself as -- do you have a  
2 license as a professional engineer?

3 A. I do not.

4 Q. Do you classify yourself as an engineer?

5 A. No, I do not.

6 Q. In your direct testimony you talk about the  
7 chronology of events in this application, and I think you  
8 say on page 7 of your direct that the annexation is kind of  
9 the first step in all this; is that correct?

10 A. What line are you referring to?

11 Q. Let's go to page 9. At the bottom of the page  
12 on line 19 you say, Perhaps the first event in a  
13 chronological sense is the Southside Annexation; is that  
14 correct?

15 A. Yes.

16 Q. Let's go back to page 7 a minute because I  
17 want to discuss with you about the date. On that page, at  
18 the bottom of the page, line 19, you say that, Once the  
19 Southside Annexation was complete on June 8th; is that  
20 correct?

21 A. I believe that was the effective date, yes.

22 Q. All right. Let's go to page 9 again and look  
23 on line 12. Then it says, This case involves 286 customers  
24 in the 1,350 acres that were part of the Southside  
25 Annexation which came into the city on June 7th, 1998. Was

1 the date of the election on June 7th?

2           A.       No. And I don't think either of these dates  
3 is referring to the election date. I think it's referring  
4 to the effective date, and I may have made a mistake on  
5 which date it was.

6           Q.       I think it's June 8th, isn't it? Is that the  
7 effective date of the annexation?

8           A.       I believe it is.

9           Q.       All right. I just noticed that, and I didn't  
10 know whether there was significance to that.

11          A.       Thank you.

12          Q.       Mr. Frey has talked about the Plan of Intent.  
13 Isn't it true that as part of the annexation process the  
14 City is required to prepare a Plan of Intent?

15          A.       Yes, sir.

16          Q.       And there were several revisions to that Plan  
17 of Intent as I understand it; is that correct?

18          A.       Yes.

19          Q.       There was a revision that was made sometime in  
20 November of 1996?

21          A.       I don't remember the dates of when the  
22 revisions were made.

23          Q.       Those revisions were part of the court case  
24 that the City filed in connection with the annexation, do  
25 you know that?

1           A.       I know there were a lot of things going on  
2 there, and I do not directly remember right now. I would  
3 have to look it up.

4           Q.       In the preparation of that Plan of Intent,  
5 it's fair to say that Intercounty was not involved in the  
6 preparation of that plan, isn't it?

7           A.       Yes, I believe that's true.

8           Q.       I'm presuming that was done entirely by staff  
9 of the City. Am I presuming correctly?

10          A.       Staff and I'm sure other professional counsel.

11          Q.       A consultant in other words. I didn't mean to  
12 exclude those. Okay. In this chronology of events, after  
13 the annexation was complete, then you were required by the  
14 statute to notify certain people that you wanted to extend  
15 your service territory; is that correct?

16          A.       Yes, sir.

17          Q.       And you had to notify Intercounty and its  
18 customers --

19          A.       Yes.

20          Q.       -- that you intended to extend the territory?  
21                    Okay. And the notice to Intercounty was given  
22 on July 13th, 1998? I think that's on page 10, line 24 of  
23 your testimony.

24          A.       Yes.

25          Q.       And while we're there, when was the notice to

1 the customers published?

2           A.       Do you have a specific line? I'm struggling  
3 to find it here. Is it here?

4           Q.       I think it is on page 10, bottom of the page  
5 there.

6           A.       The bottom of the page?

7           Q.       Line 21, I think.

8           A.       Line 21. Okay. July 15th is the date that we  
9 published it in the newspaper. Is that what you're  
10 searching for?

11          Q.       Yes, sir. That's the date. And then when did  
12 you notify the Public Service Commission?

13          A.       On July 13th.

14          Q.       About the same time you advised Intercounty;  
15 is that correct?

16          A.       That's correct.

17          Q.       Now, after the filing of those notices, your  
18 first contact with representatives of Intercounty was at the  
19 first meeting you had; is that correct?

20          A.       I do not believe that's correct. I believe  
21 that Vernon and I spoke on the phone.

22          Q.       Okay.

23          A.       Mr. Strickland. Excuse me.

24          Q.       Do you know remember when Mr. Strickland and  
25 you spoke on the phone?

1           A.       Specifically, I do not. I know it was before  
2 the meeting.

3           Q.       And what did you speak about on the phone?

4           A.       Setting up the meeting.

5           Q.       Setting up the meeting. When was the first  
6 meeting you had, do you recall?

7           A.       I do not.

8           Q.       Would it have been sometime in late August or  
9 early September or in that range, do you recall? Early fall  
10 1998?

11          A.       I believe I already said I don't remember.

12          Q.       Have any idea, was it before Halloween?

13          A.       I don't know.

14          Q.       All right.

15          A.       Without getting a calendar out.

16          Q.       Do you have something that you could look at  
17 to refresh your memory about that?

18          A.       Nothing with me, no.

19          Q.       Well, we do know that you met with Intercounty  
20 officials, and you had agendas at these meetings; is that  
21 correct?

22          A.       Yes.

23          Q.       And the subjects that you discussed included a  
24 territorial agreement for the annexed area?

25          A.       That was a topic of discussion over time, yes.

1 Q. And the possibility of granting a franchise  
2 was discussed, as I understand it?

3 A. Yes.

4 Q. During that -- during those series of  
5 meetings, did RMU process that IC, Intercounty, could  
6 voluntarily agree to make a payment in lieu of a tax just  
7 like RMU makes to the City itself?

8 A. Yes.

9 Q. And what happened with that proposal?

10 A. It was refused originally.

11 Q. Let's go to page 15 of your direct. You're  
12 discussing there your understanding of some of the statutes  
13 that are involved in the case. You also state on line 7  
14 that Intercounty's existing electrical facilities will be  
15 underutilized, forever frozen in time supplying the current  
16 customers. Is that a correct reading of your testimony  
17 there?

18 A. Yes, it is.

19 Q. Mr. Watkins, isn't it true that even if the  
20 Commission would grant the application in this case, that  
21 Intercounty will have existing facilities that have been  
22 serving this area, these that will be underutilized because  
23 of the loss of the load?

24 A. I'm sorry. I don't understand your question.

25 Q. Is it true that Intercounty has some

1 facilities located outside the annexed area that serve the  
2 area, like its substations?

3 A. Yes, they do.

4 Q. Isn't it true that, if your application is  
5 granted, the capacity in those substations will be  
6 underutilized?

7 A. Not necessarily.

8 Q. Do you agree that those substations have  
9 capacity built in that could contemplate more growth in the  
10 area?

11 A. I don't know.

12 Q. Let me talk to you about a statement you make  
13 at page 18, the bottom of the page.

14 A. Direct testimony?

15 Q. Direct. We're still in your direct. At the  
16 bottom of the page you say, In other words, if you can buy  
17 at same octane gasoline for \$1.50 per gallon at one station  
18 and \$1.40 at a station across the street, why wouldn't you  
19 buy it at the more reasonable price?

20 Are you suggesting, then, that price alone  
21 would govern a consumer's decision to choose one supplier  
22 over another?

23 A. No, I don't think so.

24 Q. You'd agree with me that location would be a  
25 factor in a decision? Wouldn't that be a decision?



1           A.       Decision for what?

2           Q.       To choose one supplier over another. Well, in  
3 your example, the location of the gas station, wouldn't that  
4 be a factor in whether one would accept the difference in  
5 price?

6           A.       With regard to gas stations, it certainly  
7 could be, yes.

8           Q.       What about service at that gas service? If  
9 you get lousy service at one and better service at another,  
10 wouldn't that go into the equation?

11          A.       It could, yes.

12          Q.       How about this, if all things, all other  
13 factors would remain the same for those two stations, then a  
14 person might consider changing because of the price; would  
15 that be fair to say?

16          A.       I'm not sure I'm saying that. It sounds like  
17 you're saying that.

18          Q.       Well, in your example, if every -- if the  
19 service providers were equal on everything else and the only  
20 thing different about them was the price that they charge  
21 for gasoline, then it would be very likely that someone  
22 would choose the less price. Would that be a fair statement  
23 for your example?

24          A.       It could be, yeah.

25          Q.       On page 19, lines 2 through 4, you talk about

1 RMU's rates being cheaper, and there's a question about  
2 whether -- there's a question about whether they shall be in  
3 the future. You have said that they have been stable since  
4 1988.

5 Right now RMU receives its wholesale power  
6 from Union Electric, is that correct, or AmerenUE?

7 A. AmerenUE, yes.

8 Q. How long of a relationship has that been?

9 A. I believe probably close to 50 years.

10 Q. 50 years. And is that relationship going to  
11 close?

12 A. No.

13 Q. Your relationship with Union Electric will  
14 continue under a wholesale power contract?

15 A. Not for power purchases.

16 Q. What relationship will you have with Union  
17 Electric as time goes on?

18 A. We will still receive our power over their  
19 transmission system.

20 Q. Over their transmission system. Have you made  
21 an arrangement for them to wheel power for you?

22 A. Yes.

23 Q. And they will be wheeling the power from the  
24 new wholesale services provider, I think that was identified  
25 as the -- I'm sorry. I can't remember how that acronym

1 goes. It's a municipal power pool; isn't that correct?

2 A. Yes.

3 Q. What was -- what's the name of the power pool?

4 A. MOPEP.

5 Q. MOPEP, Missouri --

6 A. Public Energy Pool.

7 Q. Can tell the Commission when that agreement

8 will take effect with MOPEP?

9 A. At the expiration of the AmerenUE agreement.

10 Q. When does that agreement expire?

11 A. December 31st at midnight.

12 Q. So it's anticipated on January 1st, 2001,

13 MOPEP will take over as your wholesale supplier?

14 A. Yes.

15 Q. From what I gather, Rolla has not needed to

16 wheel power before; am I correct?

17 A. I don't think that's correct. I mean --

18 Q. It has wheeled power in the past?

19 A. Its deliveries from Ameren are wheeled, I

20 mean.

21 Q. They're wheeled from places over AmerenUE's

22 facilities; is that correct?

23 A. Ameren buys their power in a lot of different

24 places.

25 A. But they're the ones that have the direct

1 connection with your transmission facilities?

2 A. Yes.

3 Q. Or your distribution facilities?

4 A. Yes.

5 Q. As far as -- is it true that you have a  
6 connection with Union Electric for power supplies. They're  
7 directly connected to you. You don't have connections with  
8 any other power supplies, do you?

9 A. Not at this time.

10 Q. Now, there is some -- I understand that RMU is  
11 going to purchase some trailer-mounted generating equipment;  
12 is that correct?

13 MR. DUFFY: Your Honor, I guess I need to  
14 state an objection on the record that I think this inquiry  
15 is irrelevant.

16 JUDGE THOMPSON: Well, Mr. Comley, I'm going  
17 to give you an opportunity to show it's relevant. So I will  
18 overrule the objection.

19 MR. COMLEY: I think questions from the Bench  
20 earlier to Mr. Bourne talked about whether or not there was  
21 going to be a chance for RMU to be generating its own power.  
22 I think that was a question from Judge Thompson to  
23 Mr. Bourne.

24 It's my understanding, based upon Data Request  
25 responses, that the trailer-mounted generating equipment

1 about which I am going to -- would like to inquire, does  
2 involve perhaps a chance that excess power from the  
3 generators will be sold.

4 JUDGE THOMPSON: I've overruled the objection.  
5 Please go ahead and put your question.

6 BY MR. COMLEY:

7 Q. Let me discuss with you about the  
8 trailer-mounted generating equipment.

9 MR. DUFFY: Your Honor, I'd just like to have  
10 a continuing objection noted in record to this line of  
11 inquiry.

12 JUDGE THOMPSON: That's fine.

13 BY MR. COMLEY:

14 Q. As I understand it, the city council approved  
15 the acquisition of the trailer-mounted units on August 23rd,  
16 2000; is that correct?

17 A. Without looking it up, I would accept what  
18 you're saying. I don't remember the exact date.

19 Q. The generating equipment will be acquired by a  
20 long-term lease; is that correct?

21 A. Yes.

22 Q. And the terminal lease is ten years; is that  
23 correct?

24 A. Yes.

25 Q. And the lease payment is approximately

1 \$802,000 annually?

2 A. Yes.

3 Q. The acquisition of the trailer-mounted  
4 generators is unrelated to future energy demands, isn't it?

5 A. How do you mean?

6 Q. Let me ask you this. Did you purchase it  
7 because you were concerned about future energy demands?

8 A. No.

9 Q. No. It's purchased for reasons other than  
10 future needs for energy?

11 A. The purpose of the purchase, I believe, is  
12 part of closed records, what RMU intends to do with them and  
13 how they intend to maximize the value that they receive from  
14 them. So I guess I'm at a little bit of a loss to get into  
15 that very deep.

16 Q. Will they be used for peaking periods?

17 A. I guess I'm going to say that the whole line  
18 of questioning would require me to divulge what I consider  
19 to be a closed record.

20 Q. Do you recall receiving Data Requests from  
21 Intercounty concerning trailer-mounted generators?

22 A. I do.

23 Q. And with respect to those Data Requests,  
24 wasn't it -- RMU originally did not answer them; is that  
25 correct?

1           A.       Yes.

2           Q.       And did RMU ultimately supplement answers to  
3 Data Requests about the trailer generated -- the  
4 trailer-mounted generating equipment?

5           A.       Some, yes.

6           Q.       I'm going to show you -- I'm just going to  
7 show you three pages of Data Request responses that we  
8 received from you and Mr. Duffy. Are you familiar with  
9 these?

10          A.       I believe I am, yes.

11          Q.       Do you recognize the way they've been  
12 numbered?

13          A.       It's a little hard to determine without the  
14 questions. All I have here, I think, are the answers.

15          Q.       Well, let me give you a copy of the questions.  
16 Let's go to No. 84. I'll ask you the question if you don't  
17 mind reading the answer, and you don't need to read the  
18 objections if you don't want to.

19                   No. 84. Is the acquisition of the  
20 trailer-mounted generators part of RMU's long-range plan to  
21 address future energy demand? And the answer to 84 is?

22          A.       Yes. And we object to producing the plan in  
23 that it is a closed record under subsection 18 of  
24 Section 610.021, RSMo.

25          Q.       The Commission is well aware of your

1 objection.

2           A.       Thank you.

3           Q.       No. 85. Is the acquisition of the

4 trailer-mounted generators unrelated to future energy

5 demand? And your answer?

6           A.       No.

7           Q.       No. 86, Are the trailer-mounted generators to

8 be used for peaking periods?

9           A.       Speculation, perhaps, yes.

10          Q.       Does your answer say speculation?

11          A.       I said speculation.

12          Q.       You said speculation. The answer said

13 perhaps?

14          A.       The document says, Perhaps, yes.

15          Q.       No. 88, How will the trailer-mounted units be

16 deployed?

17          A.       By truck.

18          Q.       By truck. No.90, How many trailer-mounted

19 units will be acquired?

20          A.       14.

21          Q.       No. 91, What are the sizes of the

22 trailer-mounted units?

23          A.       Approximately 8 feet wide and 40 feet long.

24          Q.       No. 92, what is the voltage the

25 trailer-mounted units will support?



1           A.       It depends on where the units are located.

2           Q.       93, Have any system studies been conducted to  
3 verify the impact the trailer units may have on voltages,  
4 power flows and duty faults or the compatibility of the RMU  
5 system for locating or relocating these units where needed?

6           A.       No formal study exists.

7           Q.       94, What are the anticipated number of hours  
8 of operation of the trailer-mounted units?

9           A.       Unknown.

10          Q.       No. 95, what are the anticipated hours of  
11 operation of the trailer-mounted units?

12          A.       Unknown.

13          Q.       No. 106, In the event of an outage, will the  
14 trailer-mounted units enable RMU to keep the City's water  
15 system operating safely?

16          A.       Yes.

17          Q.       No. 107, Are the trailer-mounted units to be  
18 connected in parallel with RMU's present system?

19          A.       Yes.

20          Q.       109, Will the trailer-mounted units be  
21 operated offset power purchased by RMU from other sources?

22          A.       Maybe.

23          Q.       No. 110, Will the trailer-mounted units be  
24 available for emergency service on demand?

25          A.       Yes.

1 Q. No. 111, Will the trailer-mounted units be  
2 available for backup services?

3 A. Yes.

4 Q. No. 112, what is the per unit cost of each  
5 trailer-mounted generator?

6 A. Referred back to -- let me read it. See  
7 response to question 81.

8 Q. Okay. And 81 we had \$802,000 annually. So  
9 you're telling me to divide 802,000 by 14; is that correct?

10 A. Yes.

11 Q. The number of trailer-mounted units. Okay.  
12 No. 115, Will the trailer-mounted units be used to generate  
13 revenue for RMU?

14 A. Yes. We object to Parts A, B, C, D and E on  
15 the basis that it calls for information from RMU's business  
16 plan which is a closed record.

17 Q. I didn't ask you for the objection.

18 A. You asked me to read the answers, did you not?

19 Q. All right.

20 JUDGE THOMPSON: Mr. Comley?

21 MR. COMLEY: Sir?

22 JUDGE THOMPSON: In view of Mr. Duffy's  
23 continuing objection to this line of questioning, I would  
24 ask you at this time to explain to me the relevance of the  
25 questions involving the trailer-mounted generation

1 equipment. It's not relevant to compensation clearly. Is  
2 it relevant in some way to whether it is in the public  
3 interest to grant Rolla's application?

4 MR. COMLEY: Yes, your Honor. I think our  
5 line of questioning goes to whether or not the  
6 trailer-mounted generating equipment is in some way going to  
7 have an effect on the rates charged to these customers in  
8 the future.

9 Again, we have not had access to the business  
10 plan which purportedly is the basis for many of these  
11 purchases, and this business plan and the other issues  
12 involving the business plan may in some way translate to  
13 higher costs for these customers. That's the basis for the  
14 question.

15 JUDGE THOMPSON: Okay. Please proceed.

16 MR. COMLEY: And the other issue would be the  
17 reliability of the system. The trailer-mounted equipment,  
18 of course, looks as if it's going to be a standby use. It  
19 could be a standby use. Why is it needed for a standby use?  
20 Are we expecting a difference in the reliability that RMU  
21 has?

22 JUDGE THOMPSON: Thank you.

23 BY MR. COMLEY:

24 Q. Let's go to your surrebuttal testimony. I may  
25 have gone there too quickly, Mr. Watkins. I think we might

1 still be in your direct. Excuse me. I'm sorry. I'm going  
2 back to your surrebuttal. I was in the right spot and I  
3 didn't know it.

4                   On page 9 you were talking about power  
5 outages, and on line 16 at page 9 you state that you respond  
6 in a timely fashion to any calls of outages on the system  
7 and restore service as quickly as you can.

8                   I talked with Mr. Bourne about these records,  
9 and I wanted to make sure, is it true that your records do  
10 not keep -- your records do not show the time the outage was  
11 reported?

12           A.       That's not true.

13           Q.       They do show that?

14           A.       Yes.

15           Q.       They do show that. But if we went to your  
16 records, would we know who and when was dispatched to handle  
17 that outage?

18           A.       Not from the outage report, no.

19           Q.       Do you have records on the duration of the  
20 outage?

21           A.       Yes. Yes, sir.

22           Q.       And the cause? And the cause of the outage;  
23 is that correct?

24           A.       To the extent that it was discovered, yes.

25           Q.       You also say that you -- at the bottom of the

1 page on page 9 you say, you term the outages we have  
2 experienced as minor, temporary and no different than what  
3 is experienced by other utilities.

4                   With respect to a minor outage, how do you --  
5 how do you consider an outage that may last a day?

6           A.       Define a day for me. Are you saying --

7           Q.       I'd say over 12 hours, a business day.

8           A.       A business day, 12 hours, I would -- how big  
9 of an area are we talking about?

10          Q.       City-wide.

11          A.       City-wide, I would say that's a major outage.

12          Q.       On page 12, you talk about -- at line 10 you  
13 say that, If people are dissatisfied with the management of  
14 the utility, they can contact their elected officials or the  
15 management or indirectly they can replace the elected  
16 officials.

17                   While we're on the subject of reaching you, am  
18 I right that RMU does not have a formal policy on the filing  
19 of service complaints?

20          A.       Filing as in?

21          Q.       If a customer has a problem with a service  
22 representative or a problem with the service they are  
23 receiving, RMU doesn't have a formal policy by which to  
24 accept a complaint in writing from a customer; is that  
25 correct?

1           A.       That is correct.

2           Q.       I know that everybody receives complaints, but

3 is it true that RMU does not have a way of keeping records

4 of customer complaints?

5           A.       We do not have a formal complaint file, no.

6           Q.       At the bottom of page 12 of your surrebuttal

7 you discuss a customer satisfaction survey that was

8 conducted in 1994. Is it true that you have not done a

9 customer satisfaction survey since that time?

10          A.       That is true. I would like to correct one

11 thing about what you just said there, Mr. Comley. It's a

12 citizens' attitude survey.

13          Q.       Oh, okay. You did a citizens' attitude survey

14 in 1994?

15          A.       Yes. That was something that was conducted by

16 the City.

17          Q.       Has another one of those been conducted since

18 1994?

19          A.       Not as it pertains to the electric department,

20 no.

21          Q.       Has the electric department done its own

22 survey of its customers for customer satisfaction results

23 since that time?

24          A.       No.

25          Q.       Now, on page 15 of your surrebuttal, you state

1 that the City had met with Intercounty to discuss issues  
2 like franchise agreements, services supplied without charge,  
3 and payments in lieu of taxes at the time the Plan of Intent  
4 was written.

5                   Now, with respect to that statement, are you  
6 referring to the time that Ms. O'Neill was referring to in  
7 her questions of you? Do you remember those questions about  
8 the territorial agreements you discussed with Intercounty  
9 before the Plan of Intent was prepared?

10           A.       You're going to have to excuse me, Mr. Comley.  
11 I got lost in your question here.

12           Q.       You said that the City had already met with  
13 Intercounty to discuss issues like franchise agreements,  
14 services supplied without charge and payments in lieu of  
15 taxes at the time the Plan of Intent was written?

16           A.       That's correct.

17           Q.       Now, what time was that?

18           A.       The time period that I referred to, as I  
19 testified earlier, was 1992, 1994, and several years prior  
20 to the preparation of the Plan of Intent.

21           Q.       All right. So you're talking about the  
22 meeting that you had with Mr. Strickland in 1992 about a  
23 territorial agreement. Do you remember what area was  
24 covered by that first proposal?

25           A.       Area?

1 Q. What geographical area?

2 A. No, I do not. I'm sorry.

3 Q. It wasn't the same area that we're talking  
4 about, is it?

5 A. My recollection was that there was no real  
6 maps brought out. I proposed a philosophical approach, and  
7 it was pretty much rebuffed and the issue died.

8 Q. You go on on page 15 here, you talk about the  
9 City's understanding was that Intercounty would voluntarily  
10 provide services and make contributions to the City similar  
11 to what RMU does.

12 A. Yes, sir.

13 Q. Now, let me take you to page 2 of your  
14 prepared rebuttal, and on page 10 -- or rather page 2,  
15 line 10, you say that the City's intent at that time was  
16 also based on the understanding that several of us  
17 associated with the City had that IECA, Intercounty, would  
18 make a payment in lieu of tax and provide services to the  
19 City comparable to those now being provided to the City by  
20 Rolla Municipal Utilities.

21 Now, you refer to it as a city understanding  
22 on page 15 of your surrebuttal, and you say that you were  
23 led to believe that there was --

24 A. Where are we now? I'm sorry. Led to believe,  
25 where is that?



1 Q. You talk about an understanding there on  
2 page 2, don't you?

3 A. This is in the prepared --

4 Q. Rebuttal.

5 A. -- rebuttal. Yes, sir.

6 Q. You talk about it as an understanding there?

7 A. Yes.

8 Q. Let's go to page 39 of your surrebuttal, line  
9 8.

10 A. Yes.

11 Q. Let me ask you this. Is it that you were led  
12 to believe this or did you have an understanding about what  
13 Intercounty might do?

14 A. I use the terms synonymously.

15 Q. Okay. Now, is it your testimony that, due to  
16 the understanding that the City had or the fact that you  
17 were led to believe by Intercounty in some respect that you  
18 described -- rather you prepared the City Plan of Intent to  
19 provide that electrical service would continue to be  
20 provided by Intercounty?

21 A. I'm sorry. Could you rephrase the question?

22 Q. Is it your testimony that because of the  
23 City's understanding that we've talked about on page 15 of  
24 your surrebuttal, that the City prepared its Plan of Intent  
25 to provide that Intercounty would continue to serve its

1 customers in the annexed area?

2           A.       Absolutely.

3           Q.       Are you saying this understanding was reached  
4 in 1992?

5           A.       I think probably closer to 1994, and I would  
6 refer you to the territorial agreement that was provided to  
7 the City or proposed to the City by Intercounty.

8           Q.       And again, you don't know what territory that  
9 territorial agreement addressed; is that correct?

10          A.       There was no territory defined. It was an  
11 agreement which is the precursor to setting down with the  
12 maps.

13          Q.       The understanding and your understanding of  
14 this and the circumstances, did you ever reduce this to  
15 writing with Intercounty?

16          A.       No.

17          Q.       Also, you say on page 15, It was only after  
18 the annexation when the City discovered the understanding it  
19 had was not to be honored. We're on page 15 of your  
20 surrebuttal.

21          A.       Yes.

22          Q.       So you're saying that sometime after June 8th  
23 but before you submitted the notices in this case, that  
24 Intercounty had contact with you about this?

25          A.       I believe I would say it was after the

1 election which essentially sets the annexation, and the date  
2 followed, I think, 60 days between the election date and the  
3 effective date. And so yes, it was during that period of  
4 time that it was realized that there would -- they would not  
5 honor that understanding.

6 Q. As I understood your previous testimony,  
7 Mr. Watkins, your contact with Mr. Strickland came within a  
8 week after the annexation election, but the only discussion  
9 you had was about the agenda of the first meeting?

10 A. I believe you've got that a little bit twisted  
11 in that what we just discussed a while ago was the effective  
12 date of the annexation.

13 Q. June 8th.

14 A. And that Mr. Strickland and I spoke with  
15 regard to setting up meetings and to begin that process. I  
16 don't think that's the same thing you're saying right now.

17 Q. But you said that right after -- it was only  
18 after the annexation that you discovered the understanding  
19 it had was not to be honored, and that left the City no  
20 recourse but to utilize the provisions of Section 386.800?

21 A. Yes, I did say that.

22 Q. So when did Intercounty make it clear to you?

23 A. During the period of time between the election  
24 and the effective date of the annexation.

25 Q. Between the election and the effective date of

1 the annexation?

2 A. Yes, sir.

3 Q. When was the effective date of the annexation?

4 A. The effective date of the annexation I believe

5 we agreed a while ago was June 8th.

6 Q. Aren't you saying that it was after June 8th

7 that the City discovered this?

8 A. Not really. I said after the annexation. I

9 mean, the election essentially sets the annexation in place.

10 I mean, when you see the outcome of the election, you know

11 that it's likely to happen.

12 Q. When did you file the notices in this case?

13 A. Pardon me?

14 Q. You filed the notices in this case July 13th,

15 1998, didn't you?

16 A. I believe that's right, yes.

17 Q. And that was within 38 to 40 days after the

18 annexation, correct?

19 A. Of the effective date of the annexation, yes.

20 Q. Are you saying that it was before the

21 annexation when you discovered that the -- this

22 misunderstanding?

23 A. I'm saying I think it was between the election

24 results time and the effective date of the annexation, yes.

25 Q. So it was -- all right. So on June 8th, the

1 effective date of the annexation. On July 13th, you sent  
2 the notices out. So that's when you decided to utilize the  
3 provisions of Section 386.800; is that correct?

4 A. I'd like to correct the term you. It was when  
5 the Rolla Board of Public Works made that decision, yes.

6 Q. All right. So you made that decision to  
7 utilize that. So you're telling me that it's not between  
8 June 8th and July 13th. It was not between June 8th and  
9 July 13th when you visited with Intercounty about this  
10 understanding you thought you had; is that correct?

11 A. That is correct.

12 Q. Well, when did you discuss this with them?

13 A. Again, without a calendar, I can't tell you.  
14 I'm not sure I even have a record of the actual date. I met  
15 with some of Intercounty's staff on several occasions.

16 Q. And when was this? What year was this?

17 A. Same year that you're referring to, after the  
18 election.

19 Q. In 1998?

20 A. Yes, sir.

21 Q. Well, the way I understand it, isn't it true  
22 that you exercised these provisions in Section 386.800  
23 before your first meeting with Intercounty?

24 A. Before the meeting as required by the 386.800  
25 filing, yes.

1 Q. That's right. Okay. So you're telling me  
2 that you had no recourse but to use those provisions, but  
3 you exercised those provisions before you had meetings with  
4 Intercounty; is that correct?

5 A. No. I'm telling you that I met with  
6 Intercounty staff between the election date and the  
7 effective date of the annexation. I'm telling you that it  
8 was clear the understanding was not to be honored or was  
9 just incorrect, and either way the only recourse that the  
10 City had was to make a 386.800 filing after the effective  
11 date of the annexation.

12 Q. Mr. Watkins, isn't it true that there's  
13 nothing in your direct testimony which discusses this  
14 understanding you had with Intercounty in 1992 or 1994?

15 A. Other than the assertions that I've made, and  
16 I think you mentioned three places, that's true.

17 Q. What three places are you referring to?

18 A. In my surrebuttal, the understanding that I  
19 refer to on page 15, line 14.

20 Q. Let's go to your direct testimony. Is there  
21 anything in your --

22 MR. DUFFY: Your Honor, he was not finished  
23 with his question.

24 MR. COMLEY: Well, the question, Judge, I  
25 asked him about his direct testimony, not his surrebuttal.

1                   MR. DUFFY: You asked him about where it was  
2 in his testimony, and he was in the process of telling you  
3 all the places it was in his testimony and then you posed  
4 another question. All I'm asking is that he be allowed to  
5 respond to your question before another one gets posed.

6                   JUDGE THOMPSON: Go ahead and finish your  
7 question, sir, or your answer. Pardon me.

8                   THE WITNESS: Okay. You have those marked  
9 down, Mr. Comley. I mean, if you give them to me, I will  
10 agree with you that they're there.

11 BY MR. COMLEY:

12           Q.       I'm not sure what you're talking about. Let's  
13 go back to the original question, find out where we are.  
14 Isn't it true that there's nothing in your direct testimony  
15 which discusses this understanding that you had with  
16 Intercounty in 1992 or 1994?

17           A.       It is the understanding that I'm referring to  
18 in particular in my surrebuttal testimony on page 15, line  
19 14, and it is also referred to in my direct testimony. It  
20 is also referred to in my prepared rebuttal testimony.

21           Q.       Show me where that is in your direct  
22 testimony.

23           A.       We just got through looking all three of these  
24 up. I didn't write them down.

25           Q.       Where is it in your direct testimony? Where

1 do you refer to this understanding in your direct testimony?

2           A.       It may be other places, but let's go to  
3 page 11, line 16.

4           Q.       Both sides made proposals on territorial  
5 agreements that had different areas and different time  
6 frames. We also had numerous discussions about the prospect  
7 of the City granting Intercounty a franchise and being  
8 subject to an occupation and gross receipts tax as a result  
9 of being allowed to continue serving customers in the  
10 Southside Annexation.

11                   Aren't those things that occurred during the  
12 meetings following your filing of the notices in this case?

13           A.       Yes. I'm still looking. I've been unable to  
14 find it very timely, at least in the direct testimony.  
15 However, I have found it in the prepared rebuttal testimony.  
16 It's on page 2, and it's approximately line 10, beginning at  
17 line 10.

18           Q.       We talked about that. There's nothing in your  
19 direct testimony; isn't that true?

20           A.       Well, it could be. I thought we had talked  
21 about all three, to be honest.

22           Q.       I don't think there's anything in direct  
23 testimony. But there's nothing in there that you said like  
24 we discussed the arrangement we had reached in '92 or '94,  
25 the arrangement which led to the provisions of the Plan of



1 Intent. There's nothing like that in your direct testimony;  
2 isn't that correct?

3 A. I am unable to locate it if it is, that's  
4 correct.

5 Q. Let's go to page 18 of your surrebuttal.  
6 Regarding discussion of normalized revenue which is at the  
7 bottom of the page, you state that you don't agree with the  
8 part of Mr. Ketter's discussion in the calculation of the  
9 amount of normalized revenue.

10 MR. DUFFY: I'm sorry, Mr. Comley. Can you  
11 tell me what document we're in now?

12 MR. COMLEY: We're in surrebuttal testimony.

13 MR. DUFFY: Thank you.

14 MR. COMLEY: Page 18, in the normalized  
15 revenue section.

16 MR. DUFFY: Thank you.

17 BY MR. COMLEY:

18 Q. Now, with respect to your statement there,  
19 wouldn't you agree that the Commission does have the  
20 authority to conclude that those customers we're talking  
21 about there should be considered in the gross revenue  
22 calculation?

23 A. Yes. I believe that's under the Commission's  
24 purview, yes.

25 Q. On page 21, you talk about the easements that

1 Intercounty has in this proceeding, under review of this  
2 proceeding anyway. I'll ask you some questions that I think  
3 Mr. Bourne was asked.

4           Mr. Watkins, you have no reason to believe  
5 that these easements are not satisfactory for Intercounty's  
6 purposes, do you?

7           A.       I don't have an opinion about that.

8           Q.       Do you think that they're troublesome to  
9 Intercounty for any reason?

10          A.       As I said, I don't have an opinion with regard  
11 to Intercounty's purpose and what they use them for or  
12 anything. That's not my purview.

13          Q.       You refer to its system of easement  
14 acquisition and recording as a bad business practice; is  
15 that correct?

16          A.       I believe it is.

17          Q.       And you say it's intentionally bad. Is that  
18 what you said?

19          A.       I believe it is intentionally, yes.

20          Q.       Now, is it your suggestion that Intercounty  
21 gets these easements simply to make it more difficult for  
22 you to take them over?

23          A.       I don't think it is necessarily related to  
24 this case.

25          Q.       So the intention behind it, what is the

1 intention behind it? Why do you think they're intentionally  
2 bad?

3           A.       I think it puts the onus on the customer to  
4 take issue with it, and that automatically, in my opinion,  
5 puts the occupant at an advantage.

6           Q.       But you don't have any idea whether or not  
7 customers have complained about this approach at all, do  
8 you?

9           A.       I have no idea that customers may have  
10 complained to Intercounty or not, no.

11          Q.       And you have no idea whether this has become a  
12 problem for Intercounty at all?

13          A.       That's true.

14          Q.       I think you also refer that -- just a minute.  
15 You also say that the same approach -- you also say that you  
16 should not be forced to accept unknown and potentially very  
17 costly liabilities for Intercounty's easements; is that  
18 correct?

19          A.       Yes.

20          Q.       But isn't it true, you're not being forced to  
21 buy these facilities, are you?

22          A.       No.

23          Q.       This is something that you are trying to force  
24 Intercounty to sell those facilities; is that correct?

25          A.       That is correct.

1           Q.       Let me ask you this. Mr. Watkins, do you  
2 anticipate that if this application is approved, that the  
3 customers in the annexed area will contest any request that  
4 you make for a new easement across their property if you  
5 need one?

6           A.       I have no idea.

7           Q.       Why have you included an estimate for  
8 reduction in the cost of the easements that you expect? If  
9 you have no idea what to anticipate, why have you included  
10 that estimate in this proceeding?

11          A.       Well, as I understand it, you've asked me if I  
12 anticipated future problems that RMU might have in obtaining  
13 easements. I see that as an entirely different situation as  
14 obtaining easements that potentially could be contested.

15          Q.       All right. If those easements are contested,  
16 do you anticipate that the people who are affected by the  
17 easements Intercounty have would not come to you and say,  
18 That's okay. Go ahead. We'll prepare an easement to RMU.  
19 Do you anticipate them doing that?

20          A.       I've never pondered the question.

21          Q.       And then what is the reason behind the  
22 estimate for the condemnation of easements?

23          A.       Because the liability exists to have to go out  
24 and survey the easements and to obtain them either by  
25 purchasing them or whether they're -- even if they're given

1 to us, you still have the expense of surveying and recording  
2 and those sorts of things.

3 Q. So you think there's a liability involved, but  
4 that liability wouldn't happen if people were willing and  
5 voluntarily giving you easements to solve the problem; isn't  
6 that correct?

7 A. Supposing that's the case, that is correct.

8 Q. There's nothing preventing you, if the  
9 acquisition goes through, simply by canvassing all the  
10 customers saying, We'd like to have a new easement from you  
11 for your facilities. Will you give it to us? Isn't that  
12 correct?

13 A. The question again is?

14 Q. Couldn't you simply go out and canvass all the  
15 customers and all the people that have lines across their  
16 property and say, We need to have a new easement from you?  
17 You could do that, couldn't you?

18 A. We can do that, yes.

19 Q. And if you do that, do you anticipate that  
20 they will say yes?

21 A. I don't know.

22 Q. You don't know?

23 A. No.

24 Q. Don't you anticipate that they won't say yes?

25 A. I don't anticipate either yes or no. It would

1 just be whatever it is.

2 Q. On page 24 you talk about normalized revenue  
3 again in connection with Mr. Ledbetter's calculations. I  
4 think you suggest in that section that the revenue received  
5 from the Intercounty members for the 12-month period  
6 involved in this case should be reduced by the discounts in  
7 patronage each is entitled to as a member of the  
8 cooperative. Is that a fair summary of your testimony?

9 A. I believe that's correct.

10 Q. Would you agree with me that Intercounty  
11 received in gross revenue at least, at least \$370,463.45 for  
12 the 12-month period? That's at least that much.

13 A. I don't have that number with me, but if  
14 you're --

15 Q. Let's look at page, I think it's page 4 or 5  
16 of your testimony.

17 A. Page what? I'm sorry.

18 Q. I think your surrebuttal. No. I'm sorry.  
19 It's not there.

20 MR. DUFFY: Why don't you look on page 25 at  
21 line 11?

22 MR. COMLEY: That's where it is.

23 THE WITNESS: Okay.

24 BY MR. COMLEY:

25 Q. Let's presume that you would agree with me

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1 that Intercounty received in gross revenue at least  
2 \$370,463.45; is that correct?

3 A. Yes.

4 Q. You'd agree to that. Okay. And if the  
5 Commission would reject your contentions about excluding the  
6 two customers, the CT Country Store and the other customer,  
7 I can't remember who, and also rejects your arguments about  
8 the apartment dwellers, then the gross revenue received by  
9 Intercounty could be as high as \$387,073.74, which is the  
10 figure used in Mr. Ledbetter's testimony; am I correct?

11 A. I don't have those numbers in front of me.

12 Q. I'll put it this way. If the Commission  
13 rejects your contentions about excluding the two customers,  
14 the Country Store and the other customer, and rejects  
15 arguments about the way apartments should be normalized,  
16 then the gross revenue figure received by Intercounty could  
17 go higher than what you said in your testimony?

18 A. Yes.

19 Q. Isn't a discount in patronage something that  
20 is separately calculated by Intercounty and not on the bill  
21 for service?

22 A. My understanding is that it's included in the  
23 rates charged.

24 Q. It's not on the bill, though, is it?

25 A. It's not a broke-out item. It's a bundled

1 rate.

2 Q. It is bundled into the rates?

3 A. That's my understanding, yes.

4 Q. And you're a customer of Intercounty, aren't  
5 you?

6 A. Yes, I am.

7 Q. How did you get that understanding?

8 A. Partially based on the Data Requests that we  
9 received.

10 Q. So the Data Requests indicated that it was  
11 bundled in the rates?

12 A. Based on my own experience in the rates that I  
13 pay and the capital credits and patronages that I've  
14 received back and the Data Requests, that's how I came to  
15 that conclusion, yes.

16 MR. COMLEY: Your Honor, I've got some  
17 questions about Data Requests that he's looked at, and I'm  
18 going to have to dig those out, and it may be an appropriate  
19 time to break for the evening.

20 JUDGE THOMPSON: We'll see you at 8:30  
21 tomorrow morning. We are in recess until that  
22 time.

23 WHEREUPON, the hearing of this case was  
24 recessed until December 5, 2000.

25

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