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February 16, 2001

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Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
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RE: Case No. EX-2001-450

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **MOTION FOR FINDING OF NECESSITY FOR RULEMAKING**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Eric William Anderson
Assistant General Counsel
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EWA:ccl
Enclosure
cc: Counsel of Record

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED²

FEB 16 2001

**Missouri Public
Service Commission**

In the Matter of Proposed Amendment to)
Commission Rule 4 CSR 240-21.010.)

Case No. EX-2001-450

MOTION FOR FINDING OF NECESSITY FOR RULEMAKING

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through its Office of General Counsel, pursuant to section 536.016 RSMo 2000, and for its Motion for Finding of Necessity for Rulemaking states as follows:

1. Section 536.016 RSMo 2000 provides that a state agency shall propose rules based upon "a finding by the agency that the rule is necessary to carry out the purposes of the statute that granted such rulemaking authority." Sections 386.800 and 394.312 RSMo 2000 require the Commission to establish a schedule of fees in cases involving service territories of rural electric cooperatives, municipally owned electric utilities, and electric corporations.

2. In particular, Section 386.800.4 provides that when a municipally owned electric utility and any affected electric suppliers enter into a territorial agreement regarding a newly annexed area, the provisions of Section 394.312 apply. Section 394.312 requires the Commission to review territorial agreements, normally involving rural electric cooperatives, and, where the interested parties cannot agree and upon petition by all such parties, to designate the boundaries of electric service areas as between rural electric cooperatives, electrical corporations and municipally owned electric utilities. In all cases, the Commission is to hold evidentiary hearings. Section 394.312.7 provides that "the commission shall by rule set a schedule of fees based upon its costs in reviewing proposed territorial agreements for approval or disapproval."

3. When a territorial agreement between the municipally owned electric utility and any affected electric supplier(s) cannot be reached, Section 386.800.6 requires the Commission, upon application of the municipally owned electric utility, to hold evidentiary hearings for the purpose of determining exclusive service areas in a newly annexed area, as well as fair and reasonable compensation to the affected electric supplier(s). Section 386.800.8 provides: "The commission shall by rule set appropriate fees to be charged on a case-by-case basis to municipally owned electric utilities and rural electric cooperatives to cover all necessary costs incurred by the commission in carrying out its duties under this section."

4. Commission rule 4 CSR 240-21.010, which deals with electric service territorial agreements, was promulgated pursuant only to Section 394.312, and makes no provision for the statutorily mandated collection of Commission costs related to its activities with respect to disputes between municipal utilities and affected electric suppliers arising under Section 386.800. The rule should therefore be expanded to include fees charged for evidentiary hearings that result when a municipality asks the Commission to assign service territories in an annexation dispute. Finally, the schedule of fees promulgated in the subject rule should be made consistent with those charged under rule 4 CSR 240-51.010, which deals with actions involving service territories of water utilities and concerning which the Staff is at this time filing an analogous motion.

WHEREFORE, the Staff respectfully requests that the Commission find that the proposed rulemaking is necessary.

Respectfully submitted,

DANA K. JOYCE
General Counsel



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Missouri Bar No. 47253

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 16th day of February 2001.



**Service List for
Case No. EX-2001-
February 16, 2001 (ccl)**

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