

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
March 1, 2001**

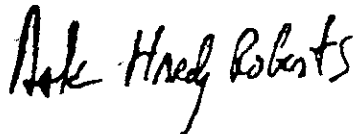
CASE NO: EX-2001-450.

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

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

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 1st
day of March, 2001.

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

)
)

Case No. EX-2001-450

ORDER FINDING NECESSITY FOR RULEMAKING

On February 16, 2001, the Staff of the Missouri Public Service Commission (Commission and Staff) filed a motion opening a case to consider the proposed amendment of Commission Rule 4 CSR 240-21.010 - Electric Service Territorial Agreements-Schedule of Fees.¹

Staff stated its motion was filed pursuant to Section 536.016, RSMo 2000,² which, *inter alia*, 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." Staff also cited Sections 386.800 and 394.312, which, *inter alia*, 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.

In particular, noted Staff, 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, according to Staff,

¹ This rule establishes a schedule of fees for Commission review of proposed territorial agreements between electric service providers.

² All references herein to sections of the Revised Statutes of Missouri (RSMo), unless otherwise specified, are to the revision of the year 2000.

requires, *inter alia*, 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. Staff noted that in all cases, the Commission is to hold evidentiary hearings. Staff stated that 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."

Staff stated that 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). Staff pointed out that Section 386.800.8 provides, in part:

...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.

Staff stated that Commission Rule 4 CSR 240-21.010, which deals with electric service territorial agreements, was promulgated pursuant 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. Staff maintains that the rule should 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, Staff concluded, the schedule of fees promulgated in the subject rule should be made consistent with those charged under Commission Rule 4 CSR 240-51.010, which deals with actions involving service territories of water utilities and concerning which the Staff is filing a similar motion.

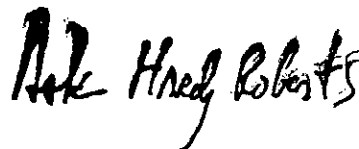
The Staff thus requested that the Commission, based on Staff's arguments, find that the proposed amendment is necessary. The Commission will grant that request.

IT IS THEREFORE ORDERED:

1. That the Staff of the Missouri Public Service Commission is authorized to complete the necessary procedures of the Commission and the applicable procedures of administrative rulemaking and may file a proposed amendment to Commission Rule 4 CSR 240-21.010 - Electric Service Territorial Agreements--Schedule of Fees.

2. That this order shall become effective on March 11, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray, Schemenauer,
and Simmons, CC., concur

Hopkins, Senior Regulatory Law Judge

ALJ/Sec'y:

Hopkins/Boyle

Date Circulated

EX-261-450
CASE NO.

2-22
Lumpke, Chair

2-23
Draimer, Vice Chair

2-23
Murray, Commissioner

KS
Schemenauer, Commissioner

KS
Simmons, Commissioner

3-1
Agenda Date

Action taken:

5-045

Must Vote Not Later Than

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 1st day of March 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

