Exhibit No:
Issue: Overall policy & procedure
Witness: Dan A. Watkins
Type of Exhibit: Direct Testimony
Sponsoring Party: City of Rolla
Case No: EA-2000-308
Date Testimony Prepared: May 31, 2000

PREPARED DIRECT TESTIMONY

OF

DAN A. WATKINS

on behalf of

CITY OF ROLLA/ROLLA MUNICIPAL UTILITIES

Exhibit No. 5
Date 12-11-00 Case No. EA-2000-308
Reporter KF

Table of Contents

I. Introduction and Summary

Q. Please state your name for the record please.

A. Dan Watkins.

Q. By whom are you employed and in what capacity?

A. I am employed by the Board of Public Works of the City of Rolla, Missouri, as the General Manager of Rolla Municipal Utilities. Rolla Municipal Utilities, or RMU, is the name we use to describe the water and electric utility operations that are owned by the City of Rolla, Missouri. The sewer operations are carried on directly by the City and are not under my supervision.

Q. Please briefly explain the duties of the position you hold and your professional background.

A. I have overall responsibility for the operations of the electric system and the water system. The Board of Public Works, whose members are appointed by the Mayor and approved by the city council, sets the overall policies for the operations. I am responsible for seeing that those policies are carried out. The board is responsible for making the major policy decisions and I have the task of carrying out those decisions. I have been the General Manager since 1992. Prior to that time I was operations manager or superintendent as it was referred to at the time. I have approximately 22 years of experience in the electric and water utility business.

Q. Please briefly describe your educational background.

A. I am a high school graduate and have attended numerous educational programs and

seminars on the operation of municipal electric and water systems.

Q. Please briefly describe the operations of Rolla Municipal Utilities.

A. RMU provides electric utility service to approximately 8,000 residential, commercial and industrial customers. We have approximately the same number of customers for water service. Rolla Municipal Utilities has been providing electric and water service since 1945.

Q. What do you understand to be the purpose of this proceeding?

A. The City wishes to take advantage of a provision in the Missouri statutes which, with the Commission's permission, will allow the City to become the exclusive service provider for electricity in an area which was recently annexed. That annexation on the south side of Rolla encompassed approximately 1,350 acres. I will refer to it as "the Southside Annexation."

My understanding is that the City can request the Commission to require a sale of the electric facilities of Intercounty Electric Cooperative Association, a rural electric cooperative that was operating in the Southside Annexation. I understand that the Commission is given the authority to set the price for the facilities based on certain criteria set out in the statute. We are here to ask the Commission to authorize the City to be the exclusive electric service provider in the Southside Annexation. If the City and Intercounty cannot agree on a price, we want the Commission to determine the fair and reasonable price, pursuant to the statute, so that the City can acquire the facilities and customers in the Southside Annexation.

Q. What is the general purpose of your direct testimony?

A. I will address several topics. These include the following:

a) the statutory framework that authorizes this proceeding;

b) the events leading up to the filing of the application, including the failed negotiations between the parties on a territorial agreement;

c) the reasons why it is appropriate and in the public interest for the City to purchase the facilities of Intercounty within the Southside Annexation.

There will be two other witnesses for RMU. Mr. Rodney Bourne of RMU will address certain technical aspects of the provision and transfer of the electric facilities in more detail than I will, including the loss of load and loss of revenue to Intercounty. He will also sponsor the "feasibility study" the Commission indicated that it wanted to be presented with our direct testimony and issues relating to the easements obtained by Intercounty for the electric lines in the Southside Annexation. Mr. David Stogsdill of RMU will address the operational issues related to the actual transferring of facilities and construction of new facilities

Q. Could you briefly summarize the City's position in this case?

A. Yes. It would be in the public interest for the Commission to determine that the City of Rolla is entitled to be the exclusive electric service provider in the Southside Annexation. Based on the information we have been provided, the total "fair and reasonable compensation" the Commission should order the City to pay Intercounty for its facilities is $1,934,650.44. The City is willing and prepared to acquire the facilities for that price. We would anticipate working with Intercounty to ensure a smooth transition of service with minimal disruption to customers. We anticipate that the transition of customers will

take place in 3 primary stages over a period of 24 months in order to ensure an orderly and economical transfer.

Q. What issues do you expect to be presented for Commission determination?

A. I am not in a position to guess what positions Intercounty or other parties might take after they have read this. I know, however, that what the City has attempted to do is to follow the procedure outlined in the statute and present its best analysis of the costs and matters presented by the statute. We have been careful to take well thought out, reasonable and practical positions on potential issues and would hope that the other parties recognize that. We have put the interests of our customers, and the potential new customers in the Southside Annexation, at the forefront. We realize that people usually do not like disruption in their lives and we do not wish to make a change of electric supplier for the approximately 286 customers involved here into something dramatic. We believe the City has benefits to offer to these customers, including a lower price for electric service, and that the acquisition of these customers by the City makes sense, and therefore is in the public interest.

II. Statutory Framework

Q. Please generally describe your understanding of the provisions of the statute that apply to this situation.

A. The provisions are found in Section 386.800 of the Revised Statutes of Missouri, enacted in 1991. I am not a lawyer, but I have read the section and am generally familiar, through my work, with statutes and how they relate to electric suppliers. Basically, the

General Assembly made some changes in the law when it enacted that new section in 1991. It says that a municipally-owned utility such as RMU is not authorized to provide electric service to a structure outside of the city limits except under certain conditions. It also set up a procedure, tied to a municipal annexation, whereby a city could apply to the Commission for an exclusive service area and acquire the facilities of another supplier in a newly annexed area. It encouraged a municipality and the electrical supplier or suppliers operating in that annexed area to attempt to reach a territorial agreement. However, if that did not occur, it provided a procedure for the Commission to determine a fair and reasonable price for the municipality to pay to buy out the facilities of the electrical supplier in the annexed area. The statute presents four factors that the Commission is to consider in reaching a decision on fair and reasonable compensation. These include public interest considerations, including consideration of rate disparities, the effect on system operations, and other related issues.

The statute was enacted at the same time, and in the same piece of legislation, with provisions which brought municipal utilities under the "anti-flip flop" laws that were already in existence for regulated electric companies and rural electric cooperatives. Section 91.025 was that provision, and it generally says that municipal electric systems can not take customers away from other electrical suppliers. With that new legislation, all of the electric suppliers in the state were governed by essentially the same set of rules. They could compete, in certain areas, for new customers but once a customer selected a supplier at a structure, no other supplier is allowed to come in and serve the structure. In broad, general terms, the statutes prevent customers from switching back and forth

between electric suppliers and prevents the electric suppliers from duplicating facilities which ultimately the customer has to pay for.

Q. You said that the 1991 statute made it unlawful for a city to provide electric service outside its city limits. Had that been the situation before 1991?

A. I'm not an expert on that. It is my understanding, however, that some classes of cities were allowed to serve outside the corporate limits and some were not. My understanding is that cities organized under the statutes could not serve electricity outside the corporate limits based on a court decision interpreting particular statutory language. However, I understand that this same limitation did not apply to cities that were organized by different means, namely what are called home rule charter cities. This change in the law in 1991 presumably brought some uniformity to that situation by saying that no city (except in certain specified circumstances), after July 1, 1991, could serve electric customers at retail outside its corporate limits. An exception is made for the City of Springfield because it was serving a substantial number of customers outside the corporate limits at the time of the legislation.

Q. Are there similar geographic boundaries for electric companies regulated by the Commission?

A. It is my understanding that the Commission sets geographic boundaries for electric companies that it regulates, and that those companies are not supposed to serve customers beyond the boundaries set by the Commission. I understand the boundaries are set in what are called "certificate" cases. I also understand that regulated electric companies can't serve inside municipalities unless the municipalities grant them a franchise. So in

that case, both the city and Commission have to agree to grant permission for the company to operate in the city.

Q. Are there similar geographic boundaries for rural electric cooperatives?

A. Not in the same sense. To my knowledge, there is no statute or government agency like the Commission that sets boundaries for rural electric cooperatives. It's my understanding that rural electric cooperatives are authorized by state statute to serve anywhere in Missouri that qualifies as a "rural area." Rural area is defined by statute as any place outside of a town of more than 1,500 in population. That definition is included in section 394.020 RSMo. So, generally speaking, rural electric cooperatives can serve in rural areas, including towns of less than 1,500 population, but they are not supposed to serve in non-rural areas. I've seen a map of the service areas of rural electric cooperatives, and it looks to me like the cooperatives have basically divided up the state among themselves and drawn their own boundaries.

Q. Is Rolla a non-rural area?

A. Yes. The population of Rolla is substantially in excess of 1,500 in population, so rural electric cooperatives are not allowed to serve new customers inside the city limits of Rolla.

Q. You used the term "new customers." Why did you say that?

A. My understanding of the law is that once the Southside Annexation was complete on June 8, 1998, the law prevents Intercounty from serving any new "structures" in that non-rural area. So after June 8, 1998, if someone builds a new structure and wants electric service in the Southside Annexation area, Intercounty cannot under the law provide service to

that new structure. RMU is the only electric supplier authorized to serve the new structure.

Q. Does that have any impact on this proceeding?

A. Absolutely. Essentially, Intercounty's operations are "frozen" in place as they existed on June 8, 1998. It's my understanding that they cannot legally serve new structures in the Southside Annexation area after that date. So to accommodate any growth in the area, RMU will have to build new electric facilities there to serve the new growth.

Q. Has the City been doing that?

A. Yes, a new subdivision called Wild Rose Hill, is being developed along Rolla Street which will be served by RMU.

Q. Are there any customers of rural electric cooperatives inside the city limits of Rolla now?

A. Yes. Not counting the customers in the Southside Annexation, there are approximately 113 customers of Intercounty Electric Cooperative Association inside the corporate limits of Rolla as of April 11, 2000.

Q. How did that happen?

A. The city limits of Rolla has changed over the years. Those customers were outside the city limits at the time they needed electric service. The City was not permitted to serve them because they were outside the city limits. So Intercounty provided the service. A subsequent annexation brought the customers within the city limits. It's my understanding that a provision in the law relating to rural electric cooperatives allowed the cooperative to continue serving those structures after annexation, even though it ceased to be a rural area. In other words, those customers were allowed to stay with the

cooperative under "grandfather" type provisions. There also was apparently no provision such as 386.800 RSMo before 1991, so there was no means for the City to compel a purchase of the rural electric cooperative's facilities after the annexation.

Q. Are these 113 customers currently being served by Intercounty that are inside the City of Rolla, but not within the Southside Annexation, affected by this case?

A. No. We have not asked the Commission to transfer any of those customers or the facilities serving those customers. As I understand the 1991 statute, the City is only allowed to request that Intercounty convey the facilities to the City that are involved with this most recent Southside Annexation. We do not see anything in the statute that would allow the City to go back to prior annexations and attempt to purchase facilities serving those customers. So this case only involves those 286 customers in the 1,350 acres that were part of the Southside Annexation which came into the City on June 7, 1998. Consequently, Intercounty can continue to serve those other 113 customers inside the City that are not within the Southside Annexation.

III. Events Preceding the Filing of the Application

Q. You indicated earlier that you would describe the events leading up to the filing of this application. Please do so.

A. Certainly. Perhaps the first event, in a chronological sense, was the Southside Annexation. I have been speaking of the "Southside Annexation" and I should tell you exactly what that is. When we filed the application in this case, we included the legal

description for the 1,350 acres used in the Southside Annexation. I won't repeat it here, but it was included as **Appendix A** to the application we filed. We also included a map depicting the area as **Appendix C** to the application. After the Southside Annexation became effective, the City complied with the notice requirements of the statute which are tied to the annexation's effective date. Specifically, subsection 3 of section 386.800 RSMo says:

> 3. When a municipally owned electric utility desires to extend its service territory to include any structure located within a newly annexed area which has received service from another supplier within ninety days prior to the effective date of the annexation, it shall:
>
> (1) Notify by publication in a newspaper of general circulation the record owner of said structure, and notify in writing any affected electric supplier and the public service commission, within sixty days after the effective date of the annexation its desire to extend its service territory to include said structure; and
>
> (2) Within six months after the effective date of the annexation receive the approval of the municipality's governing body to begin negotiations pursuant to section 394.312, RSMo, with any affected electric supplier.

Q. How did the City comply with those provisions?

A. The City published the notice required by the statute in the newspaper on July 15, 1998. We submitted a copy of the notice as **Appendix D** to the application we filed in this case. The City gave Intercounty Electric Cooperative Assocation, the "affected electric supplier," written notice on July 13, 1998. We submitted a copy of that notice as **Appendix E** to the application we filed in this case. The City also gave the Commission

written notice on July 13, 1998. We submitted a copy of the notice as **Appendix F** to the application. RMU also received the approval of the governing body of the City of Rolla to begin negotiations on a territorial agreement with Intercounty. We submitted a copy of that as **Appendix G** to the application we filed in this case.

Q. Is that all the statute required RMU to do?

A. No. Subsection 4 of the statute requires that the municipal electric utility and the affected supplier "shall meet and negotiate in good faith the terms of the territorial agreement and any transfers or acquisitions, including, as an alternative, granting the affected electric supplier a franchise or authority to continue providing service in the annexed area."

Q. Did that occur?

A. Yes. Representatives of the City and Intercounty met several times for evening meetings, with most lasting several hours. Intercounty was kind enough to host the meetings at their facility on the south side of Rolla. Among other things, we traded drafts of territorial agreements and had numerous discussions about the details of such an agreement. We studied maps of the area. Both sides made proposals on territorial agreements that had different areas and different time frames. We also had numerous discussions about the prospect of the City granting Intercounty a franchise, and being subject to an occupation or gross receipts tax as a result of being allowed to continue serving customers in the Southside Annexation. I believe we fully complied with the legislature's desire that we meet with Intercounty and seriously explore whether we could reach agreement on something short of purchasing all of Intercounty's facilities in the Southside Annexation.

Q. What is a territorial agreement?

A. Territorial agreements are agreements which are authorized by Missouri statute and approved by the Commission in which two electric suppliers get together to divide up territory, or customers, or both. I have been told that without the authorizing statute and the approval of the agreement by the Commission, such agreements would be illegal as violating antitrust laws. Basically, two parties get together and decide on a specific area or areas where they will not compete, or limit their competition, for a specified number of years.

Q. Is the City a party to any existing electric territorial agreements?

A. No.

Q. How long did the negotiations between the City and Intercounty continue?

A. A year. The statute says that the parties "shall have no more than one hundred eighty days from the date of receiving approval from the municipality's governing body within which to conclude their negotiations and file their territorial agreement with the commission ... ." But it also says that "the time period for negotiations allowed under this subsection may be extended for a period not to exceed one hundred eighty days by a mutual agreement of the parties and a written request with the public service commission." The City and Intercounty submitted a written request to the Commission, dated March 3, 1999, to extend the negotiation period because we were still negotiating when the first 180 day time period ran out. We continued to meet and negotiate on those matters during the extension.

Q. What was the result of the negotiations over the year?

A. Although we tried, had lots of discussions, and both sides put a lot of effort into it, we were not able to come to terms on a territorial agreement. As I said earlier, the essence of a territorial agreement is dividing up areas and agreeing on who the supplier is going to be in those areas, and for what period of time. The City's belief was that we should come up with a rational way of dividing up the territory in and around Rolla that made the best use of the City's existing facilities and accommodated future growth patterns by the City, and at the same time gave Intercounty some territory where they would be assured that even with future annexations, the City would not attempt to acquire their facilities. I am sure that Intercounty was attempting to do what it thought was in its own best long range interests and the interests of its customers. I do not wish to divulge any confidential settlement positions, but I think it is fair to say that, even with several proposals put on the table, the City and Intercounty could not come to an agreement either on specific territories that each would be allowed to serve, or the time frame that would accompany those territories. We also explored whether the City would grant a franchise to Intercounty to continue to operate. We were not able to come to agreement on the important question of whether Intercounty should be granted a franchise to continue to operate inside the city and pay a gross receipts or occupation tax like any other franchised supplier would do.

Q. Does RMU pay a franchise or occupation tax to the City?

A. In essence, yes. It is a payment in lieu of tax which is made voluntarily.

Q. The statute indicates that the General Assembly wanted the parties to at least negotiate on a territorial agreement or a franchise before the City would come to the Commission and

ask for an exclusive service territory. Do you believe that occurred?

A. Yes. There were serious negotiations. Both sides made written settlement offers. We spent many hours examining draft territorial agreements. I've got a stack of paper a foot high in my office covering all the different proposals. In the final analysis, the positions of the parties on some issues were so far apart there was no apparent common ground. I know the City negotiated in good faith.

Q. You indicated that the negotiations were conducted for most of a year. Would any additional time for negotiation have been beneficial?

A. I think we fully explored the positions of both parties in the time we had and therefore I don't think additional time would have produced any territorial agreement.

Q. What happened after the time ran out on the negotiations?

A. The statute contemplates such a situation. It says in subsection 6 that "In the event the parties are unable to reach an agreement ... within sixty days after the expiration of the time specified for negotiations, the municipally owned electric utility may apply to the Commission for an order assigning exclusive service territories within the annexed area and a determination of the fair and reasonable compensation amount to be paid to the affected electric supplier ... ." The time period for negotiations expired on September 3, 1999. The City filed its application on October 29, 1999, which was within the sixty day period.

IV. Public Interest Reasons Supporting the City's Purchase

Q. What reasons can you think of that support why the Commission should grant the City's

request in this case and allow it to be the exclusive electric service provider in the Southside Annexation area by compelling the transfer of Intercounty's facilities?

A. I think there are several.

One is that, as I mentioned earlier, the way the statutes work, Intercounty cannot lawfully add new customers in the Southside Annexation because it ceased to be a rural area on June 8, 1998. Now consider the current land use. The area is approximately 75% undeveloped and conversely 25% developed. Therefore, Intercounty's existing electrical facilities will be under-utilized, forever frozen in time supplying the current customers. The City on the other hand will have to build new electrical facilities perhaps in duplicate to Intercounty's electrical facilities, unless Intercounty's facilities are sold to the City, who can then serve new customers and the existing customers by maximizing the use of the existing facilities. Utilizing the existing and future facilities in a more efficient manner seems to me to be in the City's, Intercounty's, and in the public's best interest.

Another reason is that the General Assembly obviously contemplated that cities operating municipal electric systems should be able to grow with the cities because it enacted Section 386.800 to enable that to happen.

Another reason is that we can provide an immediate savings to the residential customers. RMU's rates for electric service are approximately twenty five percent (25%) cheaper than Intercounty's. Assuming 1000 kwh per month for a typical residential bill, Intercounty would charge $75.50 for that usage, and RMU would charge $60.00. Transferring these customers to RMU would therefore amount to an annual savings of $186.00 for a typical residential customer in the Southside Annexation. Included on the

Intercounty bill is a service fee of $11.50 per month. RMU does not charge a similar service fee.

Another reason is that there would not be any deterioration in the quality of service to the customers. To the contrary, RMU has been providing dependable electric service for 55 years. In the event of an outage, our crews are located right here in the City and can rapidly respond to any emergency. We also have the ability to call for assistance from other utilities to bring in additional workforce in the event of a major outage, such as an ice storm.

Q. Intercounty made an investment in these facilities. Why should the Commission force Intercounty to sell them?

A. Intercounty, as with all rural electric cooperatives, has always been restricted by law to operating in rural areas. It is just a natural progression, as is contemplated in 386.800, for some cities to increase in size, and it is also reasonable to expect that a city operating a municipal electric system would want to increase in size with the city limits. It is my understanding that the municipalities wanted the right to buy out either rural electric cooperatives or regulated electric companies in this type of situation, and that was part of the consideration for bringing municipal electric systems under the anti-flip flop laws. The General Assembly obviously recognized that municipal electric systems should have the right to buy out cooperative or electric company facilities within the cities in accordance with these new annexations, and determined that it was in the public interest. The General Assembly provided guidelines in the statute on what would adequately compensate the affected electric supplier and delegated the responsibility for determining

the exact amount to the Public Service Commission. In this situation, Intercounty is still free to grow and add new customers in other areas in the six counties in which it operates. Intercounty will not suffer any permanent harm because it is being compensated fairly for its property.

Q. On what basis do you contend that Intercounty will not suffer any permanent harm?

A. Intercounty has experienced, and continues to experience, substantial growth in other areas. The 286 customers we are dealing with here represent only one (1) percent of Intercounty's total customers. Intercounty has added an average of 718 new customers per year over the last five (5) years, so the loss of 286 customers in the Southside Annexation is not going to put a big dent in Intercounty's financial situation.

Also, remember that Intercounty is being fully compensated by being paid for the value of its facilities, and with four (4) times the annual revenue it received from these customers. Obviously, the General Assembly considered this to be an amount sufficient to fairly compensate for the loss of the property. So I contend that because Intercounty will be fairly compensated for the transfer of the property, it will not be harmed by the Commission ordering the transfer of the facilities involved in the Southside Annexation.

Q. Why didn't the City agree to grant a franchise to Intercounty and let it continue to operate and grow in the City?

A. One of the reasons that a municipality grants a franchise to an electric utility is that the statutes allow the municipality to levy an occupation or franchise tax on the revenues of the utility. As I said earlier, RMU makes a payment in lieu of tax to the City to accomplish the same purpose. Our Board of Public Works considered a grant of a

franchise to Intercounty, but it did not appear that there would be any lawful way to levy an occupation tax on Intercounty since rural electric cooperatives are not listed in the statute as an entity that can be taxed in that manner. The City did not want to pass an ordinance levying a tax on Intercounty, and then have someone challenge it on the basis that a rural electric cooperative is not something that can be taxed under the law. We would then have a franchise but no franchise tax to go with it. The Board proposed that Intercounty voluntarily agree to make a payment in lieu of tax in the same manner as RMU, but Intercounty declined to agree to that. So we could see no benefit to the City in granting a franchise under those circumstances.

Q. A few Intercounty customers in the Southside Annexation have intervened in this case and said they are opposed to the Commission ordering the transfer. What do you think about their position as you understand it?

A. I respect their views, but I think their concerns do not have any basis in fact once you analyze the situation. We are talking about electric service. The kilowatt hours we provide are indistinguishable from the kilowatt hours that Intercounty provides. The service level is arguably the same over the long run, and perhaps better with RMU, because our service personnel are located closer to the customers. As I have pointed out, the Southside Annexation customers would get the immediate benefit of a rate decrease with no degradation in the quality of service. If you can get the same thing for a more reasonable price, a rational person would chose to take it at the lower price and use the money saved for some other purpose. In other words, if you can buy the same octane gasoline for $1.50 per gallon at one station, and $1.40 at a station across the street, why

wouldn't you buy it at the more reasonable price?

Q. You have talked a lot about RMU's rates being cheaper than Intercounty's. What assurance do we have that that will continue to be the case for the reasonably foreseeable future?

A. RMU's rates have been stable since 1988 to the present. Even though the particulars are confidential, I can attest to the fact that the Board has been negotiating for power supply and formulating a business plan that will allow for continued stability for the next several years, and may actually be able to reduce rates in the future.

Q. The City is obviously going to have to pay Intercounty something for these facilities it would be acquiring. Won't that result in RMU having to raise rates to cover its new investment?

A. As will be discussed in more detail later, we believe the fair and reasonable compensation amount is $1,934,650.44, not counting the offset that is discussed by Mr. Bourne relating to the issue of easements. The RMU Board in its stewardship of the utilities provides for a reserve account that over time has built up to approximately $6,500,000. The purpose of the account is similar to a personal saving account, that allows for the purchase of large ticket items such as this or shortfall of insurance coverage for losses, without upsetting normal cash flows. In that light, I don't see the need to raise RMU's rates as a result of this acquisition.

Q. How does the City intend to schedule payment to Intercounty?

A. Assuming it is not substantially more than $1,934,650.44, RMU would propose to make monthly payments in the amount of $80,610.44 for 24 months during which the transition

would take place. If the Commission determines the price is significantly greater than that, the Board of Public Works might consider the transaction to be uneconomical or it might have to determine alternative means of payment.

Q. What if the Commission determines the price should be two or three times what you have calculated?

A. I don't see that happening based on the analysis we have done on the facilities, but I don't make the final decision on that. We would have to evaluate the Commission's determination to determine if the transaction were still in the best interests of the City of Rolla and its customers.

Q. What assurance does the public have that RMU's service personnel are adequately trained and that the people in the Southside Annexation would have a reasonable level of service reliability after the transfer?

A. I believe the staff competence is self evident by virtue of the fact that RMU has been in the business for 55 years. RMU has been able to meet the needs of the City during that period of time, and has been able to provide very competitive rates to the citizens which is further evidenced by the fact that residential rates have been stable in Rolla since 1988, and today are 25% less than the rates of the surrounding cooperative.

V. Fair and Reasonable Compensation Under the Statute

Q. Please describe the provisions of the statute relating to fair and reasonable compensation.

A. Subsection 5 of Section 386.800 of the Revised Statutes of Missouri presents five factors

that the Commission is to consider in reaching a decision on compensation. These are:

1. The present-day reproduction cost, new, of the properties and facilities serving the annexed areas, less depreciation computed on a straight line basis; and

2. An amount equal to the reasonable and prudent cost of detaching the facilities in the annexed areas and the reasonable and prudent cost of constructing any necessary facilities to reintegrate the system of the affected electric supplier outside the annexed area after detaching the portion to be transferred to the municipally owned electric utility; and

3. Four hundred percent of gross revenues less gross receipts taxes received by the affected electric supplier from the twelve-month period preceding the approval of the municipality's governing body ... , normalized to produce a representative usage from customers at the subject structures in the annexed area; and

4. Any federal, state and local taxes that may be incurred as a result of the transaction, including the recapture of any deduction or credit; and

5. Any other costs reasonably incurred by the affected electric supplier in connection with the transaction.

Mr. Bourne will discuss the details of this aspect in his testimony.

VI. Technical Aspects of the Transfer

Q. What do you have to say about the technical aspects of the transfer?

A. Mr. Bourne has put together, at the Commission's direction, a "feasibility study" showing step-by-step how we would achieve the isolation of the segments of Intercounty's facilities and cut them over to service from RMU. He has presented an engineering type analysis of the situation and addressed how the physical connections would be made and the time frames anticipated. This is not something that can be accomplished in one

afternoon. We have to carefully plan the different phases to make sure that safety is observed at all times, there is minimal disruption to the customers, and that there is a smooth transition. The only thing the customer will notice will be a brief interruption of power at the time Intercounty's line is de-energized before being re-energized from the RMU source.

Customer Billing

Q. How would the billing of customers work in the transition?

A. Our proposal is that for each of the line segments described in Mr. Bourne's testimony, Intercounty does a final meter reading just prior to the isolation and cutover, so that Intercounty can render a final bill for electricity it has provided. We would be purchasing the meter, so there is no need for the meter to be removed. After the switch to the RMU source, the customer would become RMU's customer, and would be billed in the normal course of business on RMU's rates. Although we do not expect any problems, we will work with Intercounty to assure that they are paid for their final bills. Should any final bill not in dispute issued by Intercounty to the affected customer become delinquent and remain unpaid after collection efforts, RMU would timely issue a disconnection notice to the affected customer upon the request of Intercounty, and disconnect the affected customer if necessary, to aid Intercounty in collection of the final bill. RMU would have the option of reimbursing Intercounty for the delinquent amount owed in lieu of such disconnection.

Levelized Billing Customers

Q. What about Intercounty customers that might be on a levelized billing program?

A. RMU has a budget billing service option that would be extended to any of Intercounty's customer's that are currently paying a levelized bill.

Deposits

Q. What about deposits that Intercounty customers have with Intercounty?

A. RMU proposes that Intercounty settle all accounts when they final the customer's bill at the time of transfer. RMU would not require a deposit from any transferring customers unless or until they become delinquent and then RMU's policy for them or any other customer would be to require a current deposit.

Notice to Affected Customers

Q. What sort of notice to the affected customers do you propose?

A. Given that we will be doing the isolation and cut-over on a segmented and planned basis, in coordination with Intercounty's employees, we would provide notice by mail and follow up with phone calls to each customer scheduled to be interrupted approximately a week prior to the scheduled cut-over. The mailed notice would let them know when it is scheduled, about how long we expect it to last, and give them a telephone number to call if they have any questions or special needs. We intend to follow up the mail notice with phone call attempts in the evening to attempt to personally contact the affected customers to give them additional notice.

Customer Records

Q. What about customer records that Intercounty maintained on these customers?

A. We do not believe that we will need those, although we would appreciate it if Intercounty would make them available on an as-needed basis if there is some reason for RMU to

need to know past consumption patterns.

VII. Other Issues

Q. Are there other potential issues in this case?

A. Probably. Subsection 7 of 386.800 RSMo says that the Commission, in reaching a decision on assigning an exclusive service territory, is required to considered four "factors." Those are:

> (1) Whether the acquisition or transfers sought by [RMU] within the annexed area from [Intercounty] are, in total, in the public interest, including consideration of rate disparities between competing electric suppliers and issues of unjust rate discrimination among customers of a single electric supplier if the rates to be charged in the annexed areas are lower than those charged to other system customers; and
>
> (2) The fair and reasonable compensation to be paid by [RMU] to [Intercounty] ... for any proposed acquisitions or transfers; and
>
> (3) Any effect on system operation, including, but not limited to, loss of load and loss of revenue; and
>
> (4) Any other issues on which [RMU] and [Intercounty] might otherwise agree, including but not limited to, the valuation formulas and factors contained in subsections 4, 5, and 6 of this section, even if the parties could not voluntarily reach an agreement thereon under those subsections.

Q. Are you prepared to discuss those four factors?

A. I'll give it my best shot.

Q. What about the first one?

A. As I read that one, the General Assembly is concerned about the public interest. I've

already provided reasons why we think the granting of the application we filed is in the public interest.

It then talks about "consideration of rate disparities between competing electric suppliers." I don't think that aspect is an issue here because the way the law is structured, RMU does not compete with Intercounty for customers. So we are not "competing electric suppliers." In other words, I cannot think of a situation where there would be a prospective customer sitting there with a new building who had the right to approach both Intercounty and RMU for electric service. RMU is allowed by law to serve new structures inside the city limits of Rolla, and Intercounty can not. Intercounty is allowed by law to serve new structures outside the city limits of Rolla, and RMU can not. So RMU does not "compete" with Intercounty for new customers in that sense because the supplier is determined by where the customer chooses to locate. I suppose someone could argue that we "compete" in the sense that someone building a new house could pick their electric supplier by deciding which side of the city limits to build on. However, I don't think that is the same thing. There are many other factors that go into whether someone wants to live inside or outside of a city. Therefore, I have to conclude that the Commission does not need to consider that "factor" in this situation.

The statute then talks about the Commission considering "issues of unjust rate discrimination among customers of a single electric supplier if the rates to be charged in the annexed areas are lower than those charged to other system customers." I read that as expressing a concern about rate discrimination if the rates charged by RMU in the annexed area are going to be "lower than those charged to other system customers." That

will not be the case. RMU does not set rates based on geographic areas. Residential and commercial customers of RMU in the Southside Annexation area will pay the same rates as residential and commercial customers in other parts of the City.

So I don't think the first factor in the statute comes into play here.

Q. What about the second factor?

A. That one says the Commission is required to consider "the fair and reasonable compensation to be paid by RMU to Intercounty for any proposed acquisitions or transfers. RMU has gone into great detail to develop the appropriate numbers for the Commission's consideration and those are included with Mr. Bourne's testimony, so I think RMU has provided information sufficient for the Commission to reach a conclusion on that factor.

Q. What about the third factor?

A. That one says the Commission is required to consider "any effect on system operation, including, but not limited to, loss of load and loss of revenue." Mr. Bourne has presented testimony showing the effect on Intercounty of the loss of load and revenue from these 286 customers. That testimony demonstrates that the loss of load is relatively insignificant given the size of Intercounty and the growth that exists in other areas of the six counties in which Intercounty operates. In plain terms, the transfer of these 286 customers is not going to cause Intercounty of miss payrolls or default on mortgages. The same is true with regard to the effect on Intercounty's "system operation" especially since RMU is proposing that Intercounty's tie lines going through the Southside Annexation remain in place but just be elevated to accommodate RMU placing its own

facilities underneath. Therefore, I believe that there will be no effect on Intercounty's system operations.

The revenue from these 286 customers is known. The General Assembly determined that it would be fair and reasonable for RMU to compensate Intercounty for the loss of revenue by paying Intercounty four (4) times the annual amount. I have already testified that we are ready, willing, and prepared to do that. So I think we have provided information sufficient for the Commission to reach a conclusion on that factor that calls for the transfer of the facilities.

Q. You mentioned the joint use of Intercounty's tie line. How would that be accomplished?

A. Normally two parties sharing the same facilities would negotiate a pole attachment agreement. I have attached as **Schedule DAW-1**, a draft of such an agreement. It would have to be modified to reflect the particular facts of the situation, but it contains the general principles that would apply.

Q. What about the fourth factor?

A. That one says the Commission is required to consider any other issues on which RMU and Intercounty might otherwise agree, including but not limited to, the valuation formulas and factors contained in subsections 4, 5, and 6 of this section, even if the parties could not voluntarily reach an agreement thereon under those subsections. I am not aware of anything that comes under that description at this time. Someone might argue that the Commission shouldn't do anything because the laws regarding electric regulation are being examined by the General Assembly, though.

Q. Well, you've posed the argument that someone might make. What is your response to that hypothetical argument?

A. I would say that we have to deal with the laws that exist now, not what someone might think the laws are going to look like at some indefinite point in the future. People have been talking about it, and I have been waiting for the laws to change to reduce the tax rate on capital gains and the marriage penalty for a long time, but it hasn't happened either. I don't think anyone knows either when or if or how the laws regarding electric suppliers may change. As I said, we have to deal with the laws that are in effect now. Based on the situation now, the City believes that the Commission should grant its application and order the transfer of title and operation to Intercounty's facilities within the Southside Annexation.

VIII. Summary

Q. Could you summarize your testimony?

A. Yes. We have presented the following things:

a) a feasibility study, as directed by the Commission;

b) our calculation of the fair and reasonable compensation;

c) reasons why the City of Rolla, through RMU, should become the exclusive electric supplier in the Southside Annexation area; and

d) a discussion of the factors the Commission is required to consider in this case.

Based on all of that, the Commission should grant the application and order the transfer

of title and operation of the facilities of Intercounty within the Southside Annexation.

Q. Does this conclude your direct testimony.

A. Yes, at this time.

STATE OF MISSOURI)
) ss
COUNTY OF PHELPS)

Dan A. Watkins, of lawful age, being first duly sworn upon his oath states that he has read the foregoing document and the statements contained therein are true and correct to the best of his knowledge, information and belief.

Dan A. Watkins

Dan A. Watkins

Subscribed and sworn to before me this sixteenth day of May, 2000.

Notary Public

(Seal)

THOMAS W. WASSILAK
Notary Public-Notary Seal
State of Missouri
Phelps County
My Commission Expires Aug 30, 2000

LICENSE AGREEMENT FOR JOINT USE OF

ELECTRIC SYSTEM WOOD POLES

FOR

ELECTRIC SERVICE ATTACHMENTS

BETWEEN

ROLLA MUNICIPAL UTILITIES

AND

INTERCOUNTY ELECTRIC COOPERATIVE ASSOCIATION

SCHEDULE DAW-1 (17 Pages)

LICENSE AGREEMENT FOR JOINT USE OF ELECTRIC SYSTEM WOOD POLES FOR ELECTRIC SERVICE ATTACHMENTS

THIS AGREEMENT made and entered into the _____ day of _____ , by and between Intercounty Electric Cooperative Association, a rural electric cooperative organized and existing pursuant to Chapter 394 RSMo, with its principal place of business in Licking, Missouri and with district offices in Mt. Grove, Missouri and Rolla, Missouri (hereinafter called "Intercounty"), and Rolla Municipal Utilities, a municipal electric and water system owned and controlled by the City of Rolla, Missouri pursuant to Chapter 91 RSMo (hereinafter called "RMU"), and jointly referred to as "the parties."

WITNESSETH:

WHEREAS, Intercounty (a distribution electrical cooperative) owns, operates and maintains lines of electric distribution system wood poles in parts of Crawford, Dent, Gasconade, Maries, Phelps, Pulaski, Shannon, Texas, and Wright Counties in the State of Missouri; and RMU owns, operates and maintains lines of electric distribution system wood poles within the city limits of Rolla, Missouri, as the same may change from time to time; and

WHEREAS, each party desires to document and provide a system of dealing with certain attachments which have previously been made by each party on the other's facilities through oral agreement, and to place certain lines, attachments and apparatus on certain poles of the other to provide electrical distribution service to those customers that they are lawfully entitled to serve and for the limited purpose of minimizing the duplication of facilities along certain rights-of-way; provided, that, in the pole owner's judgement, safety will not be adversely affected; and

WHEREAS, each party is willing to permit the other, to the extent they may lawfully do so, to place said lines, attachments, and apparatus on said wood poles within the geographic area shown on Exhibit "A" set forth below;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and permitted assigns, do hereby covenant and agree as follows:

1. DEFINITIONS

(A) For the purpose of this agreement, the phrase "joint use pole" shall mean a wood pole which may conform to the latest specifications of the American Standards Association, but in any event shall conform to the most recent edition of the National Electrical Safety Code as of the date of the pole's installation. Attachments to poles other than wood poles are beyond the scope of this agreement.

(B) A "pole contact" or "attachment" is defined as any attachment by the non-owner (hereinafter called "the Renter"), authorized by this agreement, to a wood pole owned by the other party (hereinafter called "the Owner".)

2. SPECIFICATIONS

(A) The joint use poles covered by this agreement shall be placed and maintained in accordance with the most stringent requirements, specifications, rules, and regulation of the latest edition of the National Electrical Safety Code (NESC), the Occupational Safety and Health Act (OSHA), the Rural Utilities Service (RUS), National Rural Electric Cooperative Association (NRECA), and the rules and practices of Intercounty as set forth in Exhibit "B" if RMU is the Renter and the rules and practices of RMU as set forth in Exhibit "B" if Intercounty is the Renter.

(B) It is understood and agreed between the parties that the rules and practices set out in Exhibit "B" may be

changed by Intercounty and RMU respectively, or new rules and practices may be adopted by either party, without resort to the provisions of Section 15, relating to supplementing or amending this agreement, and the parties agree to be bound by any such change or adoption if written notice of such change is served on the affected party pursuant to Section 18 at least ninety (90) days prior to the effective date of such change. Any authorized attachments made after the execution of this agreement but prior to the effective date of such change in the rules and practices shall be "grand fathered" as a permitted but non-conforming attachment.

(C) If the Owner changes or adopts a new rule or practice, or rules and practices, for the joint use of poles by the Renter, the Owner shall give the Renter written notice of such change or adoption in the manner contemplated by Section 18 and the Renter agrees to make such prospective changes or alterations in its installations or maintenance of its facilities as may be required in order to fully comply with the provisions of such notice. In the absence of a contrary provision in said notice, the Renter agrees to make all required prospective changes or alterations within thirty (30) days after receipt, unless the requirements exceed the reasonable capabilities of the Renters available workforce, in which case the prospective changes or alterations shall be accomplished as soon as reasonably practical without resort to overtime.

(D) The Renter shall not have authority to place any tag, brand, sign, or other device on any pole of the Owner, except a small tag or insignia which contains an identification number or shows the Renter to be a licensee of the use of such pole and not the owner thereof, or both, and which, in the opinion of the Owner, does not constitute a climbing hazard. Such a tag may be placed on such pole but only after obtaining the written consent of the Owner.

(E) The strength of poles covered by this agreement shall be sufficient to withstand the traverse and vertical loads imposed upon them under the storm loadings of the National Electrical Safety Code assumed for the area in which they are located.

(F) Any unbalanced loading of the Owner's poles caused by the placement of the Renter's circuits shall be properly guyed and anchored by the Renter, at no expense to the Owner.

3. ESTABLISHING JOINT USE OF POLES

(A) Except as otherwise provided in Sections 3 (H) and 3(J), before the Renter shall make use of any of the Owner's poles under this Agreement, it shall request permission in writing on the application form attached and identified as Exhibit C, and shall comply with the procedures set forth in this section.

(B) If, in the judgment of the Owner, joint use of a particular wood pole is undesirable for engineering or safety reasons, the Owner shall have the right to reject the application. Any such rejection shall be accompanied by a written explanation of the reasons for same. In any event, within thirty (30) days after the receipt of such application, the Owner shall notify the Renter in writing whether the application is approved or rejected. The failure to make such timely notification shall result in the assessment of liquidated damages against the Owner of one hundred dollars ($100.00) per day for each day of such continuing failure.

(C) After receipt of notice from the Owner regarding the approved application, the Renter shall furnish the Owner detailed construction plans and drawings for each pole line, together with necessary maps, indicating specifically the poles of the Owner to be used jointly, the number and character of the attachments to be placed on such poles, any rearrangement of the Owner's fixtures and equipment necessary for joint use, any relocations or replacements of existing poles, and any additional poles which may be required. The Owner shall, on the basis of such detailed construction plans and drawings, submit to the Renter within thirty (30) days a cost estimate (based on the Owner's method of computing costs) for all changes which may be required in each such pole line, including an estimated completion date for such changes. Such cost estimate shall disclose and include percentages used by the Owner for any

"overheads" or other percentages applied by the Owner as additions to actual costs. Upon written notice by the Renter to the Owner of the cost estimate being approved, the Owner shall proceed with the necessary changes in the pole line covered by the referenced cost estimate. The Owner shall make every effort to complete this work at a mutually agreed upon completion date. Nothing shall preclude the parties from making any mutually agreeable arrangement for contracting or otherwise accomplishing the necessary changes. Upon completion of all changes, the Renter shall have the right to use the poles jointly and to make attachments in accordance with the terms of the application and of this Agreement. The Renter shall, at its own expense, make attachments in such manner as not to interfere with the service of the Owner, and shall place guys and anchors to sustain any unbalanced loads caused by its attachments.

(D) Upon completion of all changes in each pole line to be used jointly, the Renter shall pay to the Owner the cost of making such changes. The obligations of the Renter shall not be limited to amounts shown on estimates made by the Owner. Costs include materials less salvage, labor, engineering, supervision, overheads, relocation costs of other joint use parties, and tree trimming. (Engineering includes design, proper conductor spacing and bonding, and calculations to determine proper ground clearances and pole and downguy strength requirements for horizontal and transverse loading). An itemized statement of the actual costs of all such changes shall be submitted by the Owner to the Renter, in a form mutually agreed upon. The Renter shall have the right to demand further documentation of any costs through the examination of invoices or other cost documentation during reasonable business hours and at the expense of Renter, not to exceed the reasonable cost of reproduction of documents or the time of personnel involved in producing copies of such documents.

(E) The Owner of each pole shall perform any tree trimming the Owner deems necessary. The Renter may request tree trimming be done on a pole on which the Renter has an attachment. The Renter shall not have authority to perform any tree trimming in regard to any pole on which it is a Renter. Any unauthorized tree trimming by a Renter or its agents or contractors shall be at the sole expense and liability of the Renter and it shall fully indemnify and hold harmless the Owner in the event of any injuries or damages occasioned by such unauthorized tree trimming.

(F) All poles jointly used under this Agreement shall remain the property of the Owner, and any payments made by the Renter, whether for annual rental or for changes in pole lines under this Agreement, shall not entitle the Renter to ownership or title or any nature of any of said poles.

(G) The Owner reserves the right to exclude any of its facilities from joint use but only for the following reasons which shall be on a reasonable basis and limited to:

(i) safety reasons in that, even with a replacement pole, there will be a violation of a nationally-recognized electrical safety standard when the prospective joint use is considered; or

(ii) engineering reasons in that, even with a replacement pole, there is no feasible manner to reasonably accommodate the attachment; or

(iii) legal reasons in that the Renter seeks to make an attachment for a purpose which the Owner reasonably believes is unlawful or would constitute a breach of this agreement.

(H) **Procedure for Documenting Existing Attachments**. Since Intercounty is already attached to some RMU poles, and RMU is attached to some Intercounty poles, pursuant to previous oral agreements, the parties agree to the following procedure to be used to inventory and document the existing attachments. Within ten (10) working days after the execution of this agreement by both parties, each shall designate personnel to perform a joint visual drive-by survey of existing attachments by either to the other and notify the other party of the personnel so designated. The joint survey shall be completed within thirty (30) days after such designation. The survey shall document, in a manner reasonably acceptable to both parties, the location of all existing attachments in a manner which will enable each party to document the nature of and later locate each of the attachments. The survey shall also, to the extent reasonably possible from Intercounty's and RMU's records, indicate the date on which the attachment was made. This shall be a visual survey only for purposes of determining the locations and

number of such attachments, and neither party shall be required to conduct any tests, measurements, or physical inspections of the attached facilities to determine whether they are in compliance with any applicable codes. However, if any safety concerns or code violations are readily apparent on such a drive-by visual inspection, the inspectors shall both report such concerns to their respective employer and the party responsible therefor shall take such corrective actions as may be appropriate under the circumstances. At the end of the thirty (30) day period, the inspectors shall produce a written document for each party which reasonably describes the nature of each attachment and records the number of such attachments for billing purposes under this Agreement. The inspectors shall attach their signatures to the document and verify that the inspections were done in a reasonable and workmanlike manner and, to the best of their knowledge, fully and fairly represents the full extent of attachments to each party's poles and other facilities as of the date of completion of the joint survey.

(I) Neither the joint survey nor any other aspect of this agreement shall be considered a "joint venture" of RMU and Intercounty.

(J) If, at any time after the completion of the joint survey, conditions are found on the poles subject to the survey which require the replacement or rearrangement of facilities, such replacements or rearrangements shall take place in the manner otherwise set forth in this agreement as if the affected party were making an initial application for attachment to the pole.

4. EASEMENTS AND RIGHTS-OF-WAY FOR THE RENTER'S ATTACHMENTS

Each party shall be responsible for obtaining its own easements or rights-of-way. The Owner does not warrant or assure to the Renter any right-of-way privilege or easement. If the Renter shall at any time be prevented from placing or maintaining its attachments on the Owner's poles, or ordered to remove its attachments as a result of such lack of authority or permission, no liability shall attach to the Owner from the Renter or anyone claiming an interest on the Renter's behalf.

5. MAINTENANCE OF POLES, ATTACHMENTS AND RIGHT-OF-WAY

(A) The Owner shall, at its own expense, inspect and maintain the poles in accordance with industry practices and the applicable specifications mentioned in Section 2, and shall replace, reinforce or repair such poles as are determined by the Owner to be defective.

(B) Whenever right-of-way considerations or public regulations make relocation of a pole necessary, such relocation shall be made by the Owner at its own expense, except that the Renter shall be responsible for and bear the cost of transferring its own attachments.

(C) Whenever it is necessary to replace or relocate a jointly used pole, the Owner shall, before making such replacement or relocation, give sixty (60) days notice in writing (except in case of emergency, when oral notice may be given and shall subsequently be confirmed in writing) to the Renter, specifying in such notice the time of such proposed replacement or relocation. The Renter shall transfer its attachments to the new or relocated pole. Should the Renter fail to transfer its attachments to the new or relocated pole at the time specified for such transfer of attachments, the Owner may elect to do such work or abandon the pole, and the Renter shall pay the Owner the cost of the pole and facilities associated with the pole. In the event the Renter fails to transfer its attachments and the Owner does such work, the Owner shall not be liable for any loss or damage to the Renter's facilities which may result, except to the extent such loss or damage is the result of negligence by the Owner, it agents or assigns.

(D) Except as otherwise provided in (C) of this Section, each party shall at all times maintain all of its attachments in accordance with the applicable specifications mentioned in Section 2 and shall keep them in thorough repair.

(E) Any existing joint use construction of the parties which does not conform to the applicable specifications mentioned in Section 2 shall be brought into conformity as soon as practicable. When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in (A) and (D) of this Section. Should the Renter fail to comply, after written notice of same, the Owner may elect to do such work and in such event the Renter shall pay the Owner the cost thereof upon being billed therefor.

(F) The Renter expressly assumes responsibility for determining the condition of all poles to be climbed or worked upon by its employees, contractors, or employees of contractors. The Owner disclaims any warranty or representation regarding the condition and safety of the poles in service. The Owner agrees that, upon written notification, it will replace any pole that has become unserviceable.

6. RECOVERY, REARRANGING OR RELOCATION OF FACILITIES

(A) In the event it is necessary for the Owner to use the space on poles occupied by the Renter, the Renter shall, upon receipt of a sixty (60) day written notice, either vacate the space by the removal or relocation of its attachments, at the discretion of the Owner, or shall authorize the Owner to replace the affected poles at the expense of the Renter and the Renter shall pay for said replacements as provided for in Section 6(B). This provision shall only apply in those situations where the Renter has not previously paid for the replacement of such pole under this agreement in order to accommodate the Renter's attachment. Once a pole has been replaced under this agreement and paid for by a Renter, any subsequent replacements shall be at the sole cost of the party requesting the replacement.

(B) In any case where facilities of the Owner or of others are required to be rearranged on the poles of the Owner to accommodate the attachments of the Renter, the requesting Renter shall pay to the Owner the total costs incurred by the Owner in rearranging such facilities. The requesting Renter shall also reimburse other users on such poles for their costs of rearrangement to provide space or clearance for the facilities of the Renter.

(C) Whenever it is necessary to replace or change the location of a joint use pole, for reasons other than those set out in Sections 6(A) and 6(B), and over which the Renter has no control, the Owner shall, before making such change, give due notice to the Renter, specifying in such notice the time of such proposed change, and the Renter shall promptly begin to transfer or remove its attachments. In case of any such pole replacement or relocation where the Owner has transferred or removed its attachments and the Renter has not transferred or removed its attachments within sixty (60) days after receipt of such written notice, the Renter shall become liable for such old pole as provided in Section 8(A).

(D) In the event of any changes contemplated under Sections 6(A), 6(B) or 6(C), the Renter shall pay the entire cost of any removal, transfers or installation of its own attachments.

7. INDEMNIFICATION

(A) The Renter shall indemnify, protect, save harmless and insure the Owner from, and against any and all claims and demands for damages to property, and for injury or death to persons, including payments made under any Workers' Compensation Law or under any plan for employees' disability and death benefits, and including all expenses incurred in defending against any such claims or demands, which may arise out of or be caused by the erection, maintenance, presence, use, rearrangement or removal of the attachments of the Renter's equipment to the Owner's poles or by the proximity of the Renter's cables, wires, apparatus and appliances to those of the Owner or by any act of the Renter, its agents and employees on or in the vicinity of the Owner's poles. The Renter shall self-insure or carry insurance in such form and in such companies as are satisfactory to the Owner, or both, to protect the parties from and against any and all claims, demands, actions, judgements, costs, expenses and liabilities of every name and

nature which may arise or result directly or indirectly from or by reason of such loss, injury or damage, and in minimum amounts as provided in this agreement.

(B) The Renter shall take out and maintain throughout the period during which this Agreement shall remain in effect insurance (which may include self-insurance) conforming with the RUS requirements of 7 CFR §1788.27, §1788.28 and §1788.359 in the following respects:

(i) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the Renter under the contract. If any employer or employee is not subject to workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(ii) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(iii) Automobile liability insurance on all motor vehicles used in connection with the agreement, whether owned, non-owned, or hired, shall have limits for bodily injury or death of not less than $1 million each occurrence; and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(C) The Renter shall furnish to the Owner a certificate evidencing compliance with the above requirements. This certificate will note specific cancellation language, as follows: "In the event of cancellation of any of the said policies, the insuring company shall give the party to whom this certificate is issued fifteen (15) days, prior notice of such cancellation."

8. ABANDONMENT OF JOINT USE POLES

(A) If the Owner desires at any time to abandon any joint use pole, it shall give the Renter notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period the Owner shall have no attachments on such pole but the Renter shall not have removed all of its attachments, such pole shall automatically become the property of the Renter, and the Renter shall thereafter hold harmless the prior Owner from every obligation, liability, or cost, and from all damages, expenses or charges incurred thereafter, arising out of, or because of, the presence of or the condition of such pole or any attachments. Upon the request of Renter, the prior Owner shall provide the Renter with a properly authorized bill of sale for such pole.

(B) The Renter may at any time abandon the use of a joint use pole by giving the Owner due notice in writing of such abandonment, as provided in Section 18, and removing from such pole all attachments that the Renter may have, and in case of such abandonment of the use of any such pole, the Renter shall pay to the Owner the full rental for the current year for the space on said pole set aside for the use of the Renter.

9. RENTALS, CHARGES AND RATES

(A) On or about December 31st of each year, the parties, acting in cooperation, shall tabulate the total number of joint poles in use as of the preceding day. This tabulation shall indicate the number of poles on which rentals are to be paid. The rental for each of the first five (5) yearly rental periods (1999, 2000, 2001, 2002, and 2003) under this agreement shall be computed on the basis of seven dollars and fifty cents ($7.50) per annum, for each jointly used pole. The rental for 2004, 2005, 2006, 2007, and 2008 shall be

computed on the basis of eight dollars and fifty cents ($8.50) per annum, for each jointly used pole. The rental for 2009, 2010, 2011, 2012, and 2013 shall be computed on the basis of nine dollars and fifty cents ($9.50) per annum, for each jointly used pole.

(B) The yearly rental period covered by this agreement shall be the twelve month period between January 1 and December 31. Rental payable for each such rental period during the continuance of this agreement shall be due and payable before February 1 of the immediately succeeding year, following the end of the rental period. The annual rental per pole for all poles jointly used prior to December 31, 1998 shall be mutually waived.

(C) All other amounts payable under this agreement, such as for erection, rearrangement, relocation or abandonment, shall be due and payable within thirty (30) days of billing by the Owner.

10. DEFAULTS

(A) If the Renter shall fail to comply with any of the provisions of this agreement or should default in any of its obligations under this agreement, and shall fail within thirty (30) days after written notice from the Owner to correct such noncompliance or default, the Owner may, at its option, and without further notice, terminate the license covering the pole or poles in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund or proration of accrued rental shall be made.

(B) If the Renter shall make default in the performance of any work which it is obligated to do under this agreement, the Owner may elect to do such work, and the Renter shall reimburse the Owner for the cost upon being billed therefor in the manner provided in Section 3.

(C) If the Renter shall make default in any of its obligations under this Agreement and it becomes necessary for the Owner to obtain the services of an attorney, who is not a salaried employee of the Owner, to enforce such obligations, the Renter agrees to pay all reasonable attorney fees, court costs and other costs of litigation associated with the enforcement of such obligations provided the Owner prevails in the litigation.

11. UNAUTHORIZED ATTACHMENT

(A) If any of the Renter's facilities for which no license has been issued shall be found attached to the Owner's poles, the Owner may, without prejudice to its other rights or remedies under this agreement, require the Renter to submit, within fifteen (15) days after the date of written or oral notification from the Owner of the unauthorized attachment, a pole attachment license application. If such application is not received by the Owner within the specified time period, the Renter shall immediately remove its unauthorized attachment, or the Owner may remove the unauthorized facilities without liability, and the expense of such removal shall be borne by the Renter by the Owner billing the Renter therefor.

(B) No act or failure to act by the Owner with regard to said unauthorized attachment shall be deemed as a ratification or the licensing of the unauthorized attachment. If any license should be subsequently issued, said license shall not operate retroactively or constitute a waiver by the Owner of any of its rights or privileges under this Agreement; provided, however, that the Renter shall be subject to all liabilities, obligations and responsibilities of this agreement from its inception in regard to said unauthorized attachment.

(C) No equipment or facilities other than those essential in business of the retail distribution of electricity shall be authorized as attachments under this agreement and all other equipment, cables, conductors or facilities shall be unauthorized. This provision shall be strictly construed and no other attachments, including but not limited to facilities used in telecommunications, the provision of Internet access, or the provision of

cable television service, shall be permitted under this agreement.

12. RIGHTS OF OTHER PARTIES; RESTRICTIONS

(A) Nothing herein shall be construed to limit the right of the Owner, by contract or otherwise, to confer upon others, not parties to this agreement, rights or privileges to use the joint use poles covered by this agreement. Nothing in this agreement is designed to confer any rights on anyone not a party to this agreement.

(B) No Renter shall supply electrical energy for power supply to a cable system which constitutes a part of the licensed attachments on any pole.

(C) This agreement shall not be construed to confer on Intercounty any right to provide electrical service to any structure or facility or device located inside the corporate limits of the City of Rolla Missouri.

(D) The Owner reserves to itself, it successors and assigns, the right to maintain its poles and operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements. The Owner shall not be liable to the Renter, its customers, or any others, for any interruptions of service to the Renter.

13. TERM OF AGREEMENT

(A) This agreement shall continue in force and effect for an initial period of fifteen (15) years from and after the date of this agreement, expiring at midnight on such date ("Expiration Date"). Unless either party hereto provides written notice to the other of its intention not to extend the Initial Term of this agreement, which notice shall be provided not more than one hundred twenty (120) days nor less than ninety (90) days prior to the Expiration Date, the term of this Agreement shall be automatically extended as of the Expiration Date for additional "Extension Terms" of one year each under the same provisions and conditions, except for the rental amount, subject to termination by either party upon not less than six (6) months notice. Unless the parties by amendment hereto set a new annual rental term, the annual rental amount for each pole attachment during each extension term shall increase above the prior year's amount by a percentage equal to the amount shown as the prime rate of interest (as such rate is reported on the first business day of the year) for large U.S. Money Center commercial banks published under the "Money Rates" section of *The Wall Street Journal*.

(B) If the Renter shall fail to commence construction of attachments on the poles of the Owner within the period of one hundred eighty (180) days after the date of execution of this agreement, then this agreement shall be null and void, and of no further force and effect.

(C) Upon the termination of this agreement, the Renter shall remove its attachments from the poles of the Owner within one hundred (100) days after the effective date of such termination. Should the Renter fail to comply, the Owner may elect to do such work and the Renter shall pay the Owner the cost thereof upon being billed therefor.

14. WAIVER OF TERMS OR CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but such conditions and terms shall be and remain at all times in full force and effect.

15. SUPPLEMENTAL AGREEMENTS

(A) This agreement may be amended or supplemented at any time upon written agreement by the parties

hereto. Should either an amendment or supplement become necessary, the party desiring such amendment or supplement shall give thirty (30) days written notice to the other party setting out in detail the changes or additions desired.

(B) In the event that the Renter desires to add or reduce the number of pole contacts, Section 15(A) shall not apply, but in each case a sketch, map, or other mutually acceptable notice shall be submitted to the Owner, setting out in detail the pole numbers and exact locations of the poles, and the quantity of poles involved in the addition or subtraction.

16. PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles, and the taxes and the assessments which are levied on said joint use poles shall be paid by the Owner thereof, but any tax, fee or charge levied on the Owner's poles solely because of their use by the Renter shall be paid by the Renter. It is hereby made the obligation of the Owner to notify the Renter of any tax, fee or charge levied on the Owner's poles solely because of their use by the Renter, within a reasonable time after the Owner becomes aware of such tax, fee or charge, so that the Renter may make the appropriate payment before incurring any penalties, interest charges, or late payment charges. Notwithstanding any other provision in this agreement to the contrary, the failure of the Owner to timely notify the Renter of such tax, fee or charge shall make the Owner liable for any such penalty, interest charge, or late payment charge incurred by the Renter, but not for the underlying tax, fee or charge.

17. INTEREST AND PAYMENTS

All amounts to be paid by the Renter to the Owner under this agreement shall be due and payable within thirty (30) days after an itemized statement is presented to the Renter. Any payment not made within thirty (30) days from the due date shall bear interest at two full percentage points above the prime rate of interest (as such rate is reported on the first business day of the month in which the bill is issued) for large U.S. Money Center commercial banks published under the "Money Rates" section of *The Wall Street Journal*, until paid.

18. NOTICES

Any notice, request, consent, demand or statement which is contemplated to be made upon either party by the other party under any of the provisions of this agreement, shall be in writing and shall be treated as duly delivered when it is either:

(A) personally delivered to the office of the Owner in the case of a notice to be given to the Owner, or personally delivered to the office of the Renter in the case of a notice to be given to the Renter, or

(B) deposited in the United States mail and properly addressed to the party to be served as follows:

(i) If notice is to Intercounty Electric Cooperative Assn.:

Intercounty Electric Cooperative Association
Attention: Manager of Engineering
102 Maple Avenue, P.O. Box 209
Licking, Missouri 65542-0209

(ii) If notice is to Rolla Municipal Utilities:

Rolla Municipal Utilities
Attention: General Manager

P.O. Box 767
Rolla, Missouri 65402-0767

19. SUPPLYING INFORMATION

(A) In addition to the information to be gathered and shared pursuant to Section 3(H) regarding attachments pre-dating the execution of this agreement, it is understood and agreed between the parties that the Renter shall furnish to the Owner within sixty (60) days after the execution of this agreement a detailed sketch or map upon which will be shown the precise locations by streets or roads of the joint use poles covered by this agreement, showing the facilities installed or to be installed upon the joint use poles and the pole numbers upon which these facilities are to be attached. Such sketch or map shall be reviewed by, and approved, commented upon, or rejected by the engineers of the Owner, and the Renter agrees to make any and all such changes in said sketch or map as are reasonably requested by said engineers. The Renter shall not begin the installation of any new attachments covered by this agreement until engineering approval by the Owner is granted.

(B) Within sixty (60) days after the completion of the initial installation of the facilities, as set forth on the above mentioned sketch or map, the Renter shall furnish to the Owner a revised copy of said sketch or map showing the precise location of each pole contact or attachment of the Renter which is actually installed on poles of the Owner. Such revised sketch or map shall be verified by the Owner and shall be the basis for determining the number of pole contacts.

(C) The Renter shall promptly report to the Owner any changes made in the number of poles of the Owner contacted by the Renter.

(D) Upon request of the Owner or the Renter, but not sooner than five (5) years after the execution of this agreement, and every five (5) years thereafter, or as may be mutually agreed upon, the parties shall make a joint field check to verify the accuracy of contact records. If, as a result of any such joint field check, it is found that the Renter is occupying any poles of the Owner without having advised the Owner as provided in Section 15, the Renter shall pay to the Owner the rental for such poles from the date that the Renter's attachments were installed on such poles, or if dates of installation cannot be determined to the satisfaction of both parties, the installations shall be presumed to have occurred at the same rate as those reported throughout the entire period since the last field check was made.

20. CONSTRUCTION OF AGREEMENT; VENUE

This agreement is deemed executed in the State of Missouri and shall be construed under the laws of the State of Missouri. The parties further agree that any action to enforce or interpret this agreement, or for damages hereunder, shall be exclusively within the jurisdiction of and venue shall be limited to the Circuit Court of Phelps County, Missouri. The parties hereby consent to the jurisdiction and venue of such court.

21. PRIOR AGREEMENTS SUPERSEDED

This agreement supersedes and replaces any and all previous agreements entered into by and between the Owner and the Renter with respect to the subject matter of this agreement.

22. ASSIGNMENT OF AGREEMENT

Neither party shall assign or otherwise transfer this Agreement or any of its rights and interests therein to any firm, corporation or individual, without the prior written consent of the other party, which shall not be unreasonably

withheld, except that a transfer of a party's interests herein may be made without the consent of the other party as a necessary part of any financing transaction in which the interests of the party in this agreement that relate to physical assets attached to poles are pledged as security for such a financing, or upon the sale of substantially all of the assets of either party, or upon a merger of a party into another entity. However, no such assignment as may be permitted by this provision shall operate or be construed to entitle the successor in interest to any greater rights under this agreement than the original party had.

23. NOTICE OF DAMAGE OR CLAIMS

Each party shall promptly notify the other of any physical damage caused to the other's facilities, or of any claims of any kind associated with the attachments under this agreement.

24. INTERFERENCE

In the event that the installation or operation of Renter's attachments, or any part thereof, interferes with telephone, telegraph, radio or television reception or other regularly used communication or signaling arrangements, the Renter shall immediately proceed to eliminate, at its sole expense, the cause of such interference by altering, rearranging, changing or removing the installation or operation of its attachments. If it is determined that such interference has been caused by improper installation or operation of Renter's electric system, and the determination was made by the Owner at the expense of the Owner, when requested, the Renter shall reimburse the Owner for any expenses incurred in connection therewith.

In witness whereof, the parties have caused this Agreement to be duly executed.

ATTEST: **INTERCOUNTY ELECTRIC COOPERATIVE ASSOCIATION**

_____ BY: _____

TITLE: _____

ATTEST: **ROLLA MUNICIPAL UTILITIES**

_____ BY: _____

TITLE: _____

EXHIBIT "A"

Attach here as Exhibit "A" a map or sketch entitled "Location of the Area subject to the Agreement". This map shall be marked Exhibit "A", should be no larger than 30" x 30", shall be properly folded to the size of 8 1/2" x 11" for inclusion in this Agreement and stapled to the Agreement in the upper left corner. This Exhibit need not show location of poles and lines, (see Section 19); but should illustrate the area in which contacts are planned.

EXHIBIT "B"

RULES AND PRACTICES FOR ELECTRICAL SYSTEM ATTACHMENTS TO INTERCOUNTY'S AND RMU'S POLES

1. All facilities attached to poles shall be installed in a manner to ensure compliance with the requirements of the "National Electrical Safety Code", in effect at the time of installation.

2. The location of all cables on poles shall be approved in writing by the Owner. No attachments shall be made without prior approval of the Owner. All facilities are to be assumed as energized.

3. All cables shall be located on the same side of each pole as any existing telephone cable, and be a minimum of 48 inches from any energized circuit or device, or as designated by the Owner.

4. On jointly used poles where the Owner has secondary conductors, all of the Renter's cables shall be located on the side of the pole opposite the secondary conductors, or as designated by the Owner.

5. Service connections to customers shall be installed and maintained so as to provide at least a forty (40) inch square climbing space directly over and corresponding to the climbing space provided for and through any telephone service connections or drops.

6. All equipment, cabinets and enclosures shall be grounded by bonding to their separate system neutral or existing pole ground with #6 solid, bare, soft drawn copper wire. There will not be any commingling of facilities between Owner and Renter's facilities, including neutrals or pole grounds.

7. No power supply shall be installed on any poles on which are already installed transformers, underground electric services, capacitor banks, or sectionalizing equipment.

8. No bolt used by Renter to attach its facilities shall extend or project more than one (1) inch beyond its nut.

9. All attachments or facilities shall have at least two (2) inches clearance from unbonded hardware.

10. All wires shall have at least forty-eight (48) inches clearance under the effectively grounded parts of transformers, transformer platforms, capacitor banks and sectionalizing equipment and at least forty-eight (48) inches clearance under the current carrying parts of such equipment (energized at 8700 volts or less). Clearances not specified in this rule shall be determined by reference to the "National Electrical Safety Code".

11. Renter may, with the prior written approval of Owner, install cross-arms, alley arms, or cable extension arms for the support of any of its facilities. However, Renter shall not use any cross-arm or alley arm brace above the arm which it supports.

12. Renter shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the maintenance of the overall appearance of the jointly used pole, and all subject to the approval of Owner.

13. All down guys, head guys or messenger dead ends installed by Renter shall be attached to jointly used poles by the use of "thru" bolts. Such bolts placed in a "bucking" position shall have at least three inches vertical clearance. Under no circumstances shall Renter install down guys, head guys or messenger dead ends by means of encircling jointly used poles with such attachments. All guys and anchors shall be installed prior to installation of any wire or cables.

14. In the event that any of Renter's proposed facilities are to be installed upon poles already jointly used by Owner and other parties, without in any way modifying the clearance requirements set forth in these Rules and Practices, Renter shall negotiate with such other parties, as to clearances between its facilities and the spans of Renter and

such other parties.

15. In the event Renter desires to request a change in the number of pole contacts, it shall do so by submitting to Owner the standard form suitable for that purpose.

16. Renter shall provide a written statement signed by a Professional Engineer or supervisory employee representing Renter, that its facilities, including protective devices, as installed are fully in compliance with the rules of the NESC, other applicable codes and requirements, and good engineering design. This inspection shall be made within thirty (30) days after installation has been completed. Failure to comply will result in default as described in Section 10(A), 10 (B) and 10(C).

EXHIBIT "C"

APPLICATION AND PERMIT FOR THE JOINT USE OF WOOD POLES

Application No. _____ Date _____

In accordance with the terms of the Agreement dated _____, application is hereby made for ___ _____ to make attachments to _____ poles located in or near _____ in the County of Phelps and the State of Missouri.

The poles, including proposed construction by the Owner if necessary for which permission is requested are listed by pole number on the attached Exhibit "C1" and further identified on the attached map. Detailed construction plans and location drawings, will be furnished.

_____
Renter

By: _____

Title: _____

I hereby certify that upon final inspection (which will be made within 30 days after construction is complete) the attachments fully comply with the National Electrical Safety Code (NESC), latest edition, and no poles or facilities of _____ will be in violation of NESC as the result of said attachments.

_____ _____
Registration Number (State) Engineer's Signature

Permission for construction granted _____ , _____ , subject to: (1) your approval of the following changes and rearrangements at an estimated cost to you of $ _____ , (2) the necessary third-party rearrangements are done satisfactorily, and (3) that the Renter construct according to standards.

By: _____

Title: _____
OWNER

The above estimates for make-ready changes and rearrangements approved _____ , ____ . The Renter intends to construct plant within 120 days after make-ready work is complete.

PERPETUAL INVENTORY OF POLES
Current Balance _____
Added or (Removed) _____
New Balance _____

By: _____

Title: _____
RENTER

EXHIBIT "C1"

ATTACHMENTS TO BE INSTALLED

RENTER: OWNER:

POLE NUMBER	COMMENTS - MAKE-READY	PERMISSION GRANTED	ESTIMATED COST OF MAKE-READY

EXHIBIT "D"

NOTIFICATION OF REMOVAL OF JOINT USE FACILITIES

Date _____

In accordance with the terms of the Agreement dated _____, application is given to _____ _____ of the removal of attachments from _____ poles located in or near _____ _____ in the County of Phelps and the State of Missouri.

The poles from which attachments have been removed are listed below:

Exhibit D1 and further identified on the attached map.

POLE NUMBER	USE	POLE NUMBER	USE

Rolla Municipal Utilities

By: _____

Title: _____

Notice Acknowledged

_____

PERPETUAL INVENTORY OF POLES
Current Balance _____
Added or (Removed) _____
New Balance _____

Intercounty Electric Cooperative Assn.

By: _____

Title: _____