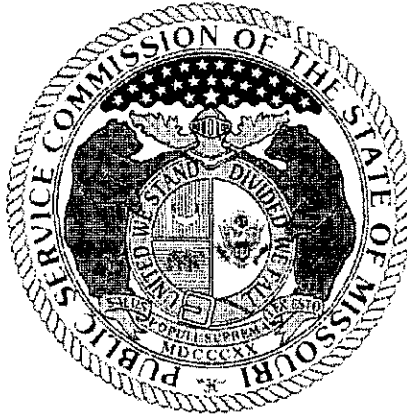


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of the City)
of Columbia, Missouri, and Public Water Supply)
District No. 4 of Boone County, Missouri, for)
Approval of a Territorial agreement Concerning)
Territory Encompassing Part of Boone County,)
Missouri.)

Case No. WO-2000-472

REPORT AND ORDER

Issue Date:

April 25, 2000

Effective Date:

May 5, 2000

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of the City)
of Columbia, Missouri, and Public Water Supply)
District No. 4 of Boone County, Missouri, for) Case No. WO-2000-472
Approval of a Territorial agreement Concerning)
Territory Encompassing Part of Boone County,)
Missouri.)

APPEARANCES

Fred Boeckmann, City Counselor, Post Office Box N, Columbia, Missouri, for the City of Columbia.

J. Turner Jones, Jones, Schneider & Bartlett, 11 North Seventh Street, Columbia, Missouri 65201, for Public Water Supply District No. 4 of Boone County, Missouri.

Douglas E. Micheel, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Keith R. Krueger, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Nancy Dippell, Senior Regulatory Law Judge.

REPORT AND ORDER

Procedural History

Public Water Supply District No. 4 of Boone County, Missouri (District), and the City of Columbia, Missouri (City), (collectively referred to as "Applicants"), pursuant to Section 247.172, RSMo 1994¹,

¹ All further statutory references are to the Revised Statutes of Missouri 1994 unless otherwise indicated.

filed a joint application requesting that the Commission determine that their proposed territorial agreement, designating the service territory of each of the Applicants is not detrimental to the public interest. The proposed territorial agreement is attached to this Report and Order as Attachment A.²

The Commission issued an Order and Notice on February 16, 2000, directing parties wishing to intervene in the case to do so by March 7, 2000. No applications to intervene were filed. The Applicants, the Office of the Public Counsel (Public Counsel), and the Staff of the Missouri Public Service Commission (Staff) filed a Unanimous Stipulation and Agreement stating that the territorial agreement is in the public interest and should be approved. A copy of the Stipulation and Agreement is attached to this order and incorporated herein as Attachment B.

The Commission held an evidentiary hearing on March 31, 2000. All parties were represented at the evidentiary hearing.

Discussion

The District is a political corporation of the State of Missouri established and existing pursuant to Chapter 247, RSMo, engaged in providing water service to the public in Boone County, Missouri. The City

² The attachments to the Territorial Agreement include: 1) Exhibit 1, a metes and bounds description of the water service area of the District; 2) Exhibit 2, a map showing the water service area of the District; 3) Exhibit 3, a metes and bounds description of the water service area of the City; 4) Exhibit 4, a map showing the water service area of the City; 5) Exhibit 5, a map showing the water service areas to be transferred from the District to the City; and 6) Exhibit 6, a list of the equipment and facilities to be transferred by the District to the City, and the price City shall pay the District for each item. Those attachments are not attached to this order due to their size, but are in the official case file available for public inspection.

is a municipal corporation presently engaged in providing water service within the City of Columbia, in Boone County, Missouri. Applicants are subject to the Commission's jurisdiction for purposes of this territorial agreement under the provisions of Section 247.172, RSMo.

Applicants jointly applied for approval of a territorial agreement that would designate the boundaries of the water service areas of each of the Applicants. The territorial agreement also sets out the powers that each applicant grants to the other to operate in their respective corporate boundaries. The territorial agreement provides for the transfer of 125 customers between the Applicants.

Before approving the proposed territorial agreement, the Commission must determine that it is not detrimental to the public interest. The first factor the Commission will consider in deciding the appropriateness of this territorial agreement is the extent to which the agreement eliminates or avoids unnecessary duplication of facilities. The Applicants stated in their application and Staff's witness, Dale Johansen, testified at the hearing that the designated boundaries and transfer of customers will avoid any future duplication of facilities in the affected areas.

Second, the Commission will consider the ability of each party to the territorial agreement to provide adequate service to the customers in its exclusive service area. Mr. Johansen testified at the hearing that the Applicants have the ability to make available adequate water supplies in their designated service areas.

The third area for Commission concern is the effect of approval of the territorial agreement on customers of the Applicants. Mr. Johansen testified that approximately 125 customers will have their water service provider changed as a result of this territorial agreement. Mr. Johansen stated that some residential customers may experience a small increase in their water service bill. As an example, Mr. Johansen stated that a residential customer using approximately 6,000 gallons per month may experience an increase of less than \$1.00 per month. Mr. Johansen also testified that some customers may experience a decrease in their monthly bills of more than \$5.00 per month as a result of the transfer of customers. Mr. Johansen stated that the District will benefit from the payment made to the District for the transferred area because it will now have more resources available to expand into rural areas it is not currently serving.

Fourth, the Commission will consider a category of other cost and safety benefits attributed to the proposed territorial agreement. Mr. Johansen testified that the territorial agreement provides for specific safety considerations involving the District's facilities that are located with the city limits with regard to fire flow requirements, fire hydrants and associated tees and valves, and construction of general system improvements.

Mr. Johansen testified that it is Staff's opinion that the agreement is not detrimental to the public interest.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

The Commission finds that approval of the territorial agreement signed by the Applicants on September 28, 1999, would avoid future duplication of facilities. The Commission finds that the Applicants are capable of adequately and safely providing the water service, and maintenance needs of the customers in their service areas as designated in the proposed territorial agreement. The Commission further finds that the overall effect of the proposed territorial agreement would not be harmful to ratepayers, and that the agreement would promote efficiency and safety.

Conclusions of Law

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

The Missouri Public Service Commission has jurisdiction over the territorial agreement between the District and the City as specified in Section 247.172, RSMo.

When a public water supply district and a municipality enter into a territorial agreement, the agreement must be approved by the Commission after hearing. Section 247.172, RSMo. The Commission may approve a territorial agreement if the agreement in total is not detrimental to the public interest. Section 247.172, RSMo. Based on the findings of fact it has made, the Commission concludes that the territorial agreement proposed by the District and the City, Case No. WO-2000-472, is not detrimental to the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That the Territorial Agreement attached to this order as Attachment A and signed by Public Water Supply District No. 4 of Boone County, Missouri, and the City of Columbia, Missouri, on September 28, 1999, is approved.
2. This Report and Order shall become effective on May 5, 2000.
3. That this case may be closed on May 6, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer,
Murray, and Schemenauer, CC.,
concur and certify compliance
with the provisions of
Section 536.080, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 25th day of April, 2000.

Territorial Agreement

between

The City of Columbia and Public Water Supply District No. 4 of Boone County

THIS AGREEMENT, made and entered into this 28 day of Sept., 1999, by and between the CITY OF COLUMBIA, MISSOURI, a municipal corporation, hereinafter called "CITY", and PUBLIC WATER SUPPLY DISTRICT No. 4 OF BOONE COUNTY, MISSOURI, hereinafter called "DISTRICT":

WITNESSETH:

Whereas, the City is authorized by law to provide water services both within and outside the boundaries of the CITY; and

Whereas, the DISTRICT is authorized by law to provide water services within the boundaries of the DISTRICT; and

Whereas, an overlap exists between the boundaries of the CITY and the boundaries of the DISTRICT; and

Whereas, duplication of equivalent facilities in areas directly served by both the CITY and the DISTRICT entails waste of resources and increases customer costs; and

Whereas, CITY and DISTRICT desire to avoid wasteful duplication of services and undue costs to their respective customers,

NOW, THEREFORE, CITY and DISTRICT agree as follows:

1. The water service area of the DISTRICT is described by metes and bounds in Exhibit "1" attached to this agreement and is shown on the map attached to this agreement as Exhibit "2". The water service area of the CITY is described by metes and bounds in Exhibit "3" attached to this agreement and is shown on the map attached to this agreement as Exhibit "4", all of which are incorporated herein by reference and made a part of this agreement as fully as if set out verbatim. The common boundary line between the two territories is hereinafter referred to as the "Water Service Boundary Line".

2. The CITY shall provide water service to its existing customers and to all new customers within its water service area in accordance with the requirements of the Code of Ordinances of the City of Columbia, Missouri.

3. Except as otherwise agreed to by the parties in writing, the CITY shall continue to provide water service to those customers it has as of the date of this agreement within the water service area of the DISTRICT but shall not provide water service to any new customers within the water service area of the DISTRICT.

4. The DISTRICT shall provide water service to its existing customers and to all new customers within its water service area in accordance with its Rules and Regulations.

5. Except as otherwise agreed to by the parties in writing and except as otherwise provided in paragraph 6 below, the DISTRICT shall continue to provide water service to those customers it has as of the date of this agreement within the water service area of the CITY but shall not provide water service to any new customers within the water service area of the CITY except that the DISTRICT shall serve all of the 147 platted lots of Haystack Acres and Haystack Acres Addition subdivisions and all of the preliminarily platted 113 lots of Willow Brook Subdivision and all of the 15 platted lots of Forestview Heights Subdivision and all of the 4 lots of the revised Northwood Subdivision.

6. Within thirty (30) days after this agreement has been approved by the Missouri Public Service Commission as specified in paragraph 14 below, the DISTRICT shall transfer to the CITY title to all of its water mains, waterlines, valves, meters and fire hydrants in the following areas shown cross-hatched on Exhibit "5" attached, to-wit:

- a) The North Brown Station Road area; up to the south property line of Meadow Lakes Subdivision, but excluding an 8" loop along Route B and Browns Station Rd. North of the intersection of Browns Station Rd. And Route B; and
- b) The Oakland Gravel Road area, and
- c) The Boone County Fairgrounds area.

At the time of transfer the DISTRICT will provide the CITY with the names, addresses, services and billing information for all customers transferred to the City. At the time of transfer the DISTRICT shall assign to the CITY its Water User Agreements with its customers in said areas and the CITY shall assume and agree to perform when due the obligations of the DISTRICT under said Water User Agreements. At the time of transfer the DISTRICT shall deliver to the CITY all utility deposits held by the DISTRICT for the transferred customers. The CITY shall be accountable to the water users for said meter deposits and the water user charges on said meters shall be prorated as of the date of the said transfer. At the time of transfer DISTRICT will convey all district water mains with the areas listed above along with all service connections to the transferred customers and the meters and appurtenances.

In exchange for transfer of the aforesaid facilities and documents the CITY shall pay to the DISTRICT in cash the sum of Sixty-five Thousand Five Hundred Ninety-nine and 15/100 Dollars (\$65,599.15) representing payment for the items shown on Exhibit "6" attached hereto and made a part hereof, less any amount previously paid to DISTRICT as a result of a transfer agreement

between the PARTIES concerning customers on Jamesdale and Sherwood Drive.

7. The customers of the parties shall not be allowed to switch receiving water service from one party to the other party without the prior written consent of both parties. All agreements to transfer customers shall be reduced to writing and approved by the respective governing bodies of both parties prior to the actual transfer of customers.

8. In the event the CITY annexes any of the area located north of the "Water Service Boundary Line" referred to above herein, the DISTRICT shall furnish, or shall arrange to furnish through its developers or customers, to any new waterline extension in such annexation areas such water supply as required in order to deliver the same level of fire flows that is required of the City of Columbia Water & Light Department to meet residential flow design standards of approximately 800 gallons per minute for a four hour duration at a minimum system residual pressure of 20 psi. If the DISTRICT is unable to provide the fire flow required by the CITY for any proposed commercial or industrial development that is both within the CITY limit and within the DISTRICT water service area, DISTRICT and CITY may enter into an agreement to allow the extension of a CITY water main to provide water service to such development.

9. The DISTRICT shall furnish, or shall arrange to furnish through its developers or customers, fire hydrants and associated tees and valves within its water service area in all new developments within the City limit at locations approved by the City.

10. The improvements to the water system of the DISTRICT within its water service area located within the City limit shall be coordinated with other utilities and CITY services through the City Planning Department.

11. The DISTRICT shall have the right to occupy and use the CITY public road rights-of-way and CITY public utility easements in the same manner as other utilities.

12. Neither the Water Service Boundary Line nor the term of this agreement may be modified, repealed or changed except by a written document executed by the parties and approved by the respective governing boards of both parties and approved by the Missouri Public Service Commission.

13. The parties recognize that neither this agreement nor approval of this agreement by the Missouri Public Service Commission shall in any way affect or diminish the rights of any water supplier not a party to this agreement to provide water service within the water service areas set forth in this agreement. (Section 247.172(5) RSMo.) The parties further recognize that the CITY may enter into territorial agreements with other water suppliers pertaining to the water service area of the CITY described herein and that the DISTRICT may enter into territorial agreements with other water suppliers pertaining to the water service area of the DISTRICT described herein.

14. The initial term of this agreement shall be for a period of twenty five (25) years from and after the date that this agreement is approved by the Missouri Public Service Commission.

Thereafter, this agreement shall automatically be renewed for successive terms of one (1) year each until either party give not less than one (1) year written notice of termination of this agreement in which event this agreement shall terminate at the end of the then current term.

15. In the event this agreement is not approved by the Missouri Public Service Commission within one (1) year after the date of this agreement, this agreement shall thereupon automatically become null and void.

16. This agreement shall be binding upon the undersigned and our successors and assigns.

IN WITNESS THEREOF, the parties have executed this agreement on the day and year first written above.

CITY OF COLUMBIA, MISSOURI

BY: Raymond A. Beck
Raymond A. Beck, City Manager

ATTEST:

Penny S. Romaine
City Clerk Penny S. Romaine

APPROVED AS TO FORM:

Fred Boeckmann
City Counselor Fred Boeckmann

PUBLIC WATER SUPPLY DISTRICT
NO. 4 OF BOONE COUNTY, MISSOURI

By: James Loethen
President James Loethen

ATTEST:

Bonnie L. Durk
Clerk Bonnie L. Durk

STATE OF MISSOURI)
) SS.
COUNTY OF BOONE)

On this 2nd day of Nov., 1999, before me, a notary public in and for said county and state, came Raymond A. Beck, City Manager, and Penny St. Romaine, City Clerk of the CITY OF COLUMBIA, MISSOURI, a political subdivision duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Missouri, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said CITY, and such persons duly acknowledged the execution of the same to be the act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunder to set my hand and affixed my official seal, at my office in Columbia, Missouri, the date and year last above written.

Carol A. Rhodes
Notary Public

My Commision expires:

5/30/00

CAROL A. RHODES
Notary Public - Notary Seal
State of Missouri
County of Boone
My Commission Expires May 30, 2000

STATE OF MISSOURI)
) SS.
COUNTY OF BOONE)

On this 28 day of Sept., 1999, before me, a notary public in and for said county and state, came James Loethen, and Bonnie L. Durk, to me personally known, who, being me duly sworn, did say that he is the President of PUBLIC WATER SUPPLY DISTRICT NO. 4 OF BOONE COUNTY, MISSOURI, a corporation of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and the said President acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunder to set my hand and affixed my official seal, at my office in Columbia, Missouri, the date and year last above written.

Fred Mattaz
Notary Public Fred Mattaz

My Commision expires:

Nov. 14, 2002

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

MAR 20 2000

Missouri Public
Service Commission

In the matter of the application of the)
City of Columbia, Missouri and Public)
Water Supply District #4 of Boone)
County, Missouri for approval of a)
territorial agreement concerning)
territory encompassing part of Boone,)
County, Missouri.)

Case No. WO-2000-472

UNANIMOUS STIPULATION AND AGREEMENT

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), the City of Columbia, Missouri ("City"), Public Water Supply District #4 of Boone County, Missouri ("District") and the Office of the Public Counsel ("OPC"), by their undersigned counsel, and for their Unanimous Stipulation and Agreement ("Stipulation") stipulate and agree as follows:

1. On September 28, 1999, the City and the District ("Applicants") executed a water service territorial agreement ("Territorial Agreement") pursuant to Section 247.172, RSMo 1994. On February 2, 2000, also pursuant to Section 247.172, RSMo 1994, the Applicants filed a Joint Application with the Missouri Public Service Commission ("Commission") requesting that the Commission approve the Territorial Agreement and find that it "is not detrimental to the public interest". A copy of the Territorial Agreement was attached to the Joint Application as Appendix A and a listing of the customers whose water service would be changed by the Territorial Agreement was attached to the Joint Application as Appendix B.

2. On February 16, 2000, the Commission issued its Order and Notice ("Order") requiring the Applicants to jointly notify each of the persons whose water service would be affected by the Territorial Agreement and requiring the Applicants to jointly file with the

Commission a copy of the required customer notice. The Commission's Order also directed the Applicants, the Staff and the OPC ("Parties") to file a proposed procedural schedule for this case on or before March 7, 2000, with the schedule including provisions for a hearing to take place on or before April 21, 2000. The Commission's Order also directed that notice of the Joint Application be given to the County Commission of Boone County, the members of the General Assembly representing the Applicants' service areas and to the newspapers that serve the Applicants' service areas. Lastly, the Commission's Order set an intervention deadline of March 7, 2000 for this case.

3. No requests for intervention in the case were received by the set deadline.

4. On February 28, 2000, a copy of the customer notice required by the Commission's February 16 Order was filed in the case papers for this case.

5. On March 7, 2000, the Parties filed a proposed procedural schedule as directed by the Commission's February 16 Order. The proposed schedule included a filing date of March 20, 2000 for a Stipulation and Agreement regarding the case and a date of March 31, 2000 for the required evidentiary hearing for the case. On March 10, 2000, the Commission issued an Order Scheduling Hearing wherein it adopted the Parties' proposed procedural schedule.

6. The Territorial Agreement specifically designates the boundaries of the respective water service areas of the City and the District. The Territorial Agreement also sets forth any and all powers granted to the District by the City to operate within the corporate boundaries of the City and any and all powers granted to the City to operate within the boundaries of the District. The Territorial Agreement also acknowledges that neither the Territorial Agreement nor the Commission's approval of it affects or diminishes the rights and duties of any water

supplier that is not a party to the Territorial Agreement to provide service within the boundaries designated in the Territorial Agreement.

7. The Territorial Agreement will enable the Applicants to avoid wasteful duplication of facilities in the service areas affected by it and will thus enable the Applicants to also avoid undue costs to their respective customers.

8. The Parties agree that the Territorial Agreement meets the requirements of Section 247.172, RSMo 1994. The Parties further agree that the Territorial Agreement is not detrimental to the public interest and that the Commission should so find.

9. The Parties agree that the testimony to be provided at the evidentiary hearing for this case will be limited to the Staff calling one witness to provide testimony in support of the Joint Application, the Territorial Agreement and this Stipulation, unless otherwise requested by the Commission in advance of the hearing. The Applicants will, however, have representatives available at the evidentiary hearing to answer questions from the Commission and/or the presiding officer.

10. This Stipulation has resulted from negotiations among the Parties and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the Parties to take other positions in other proceedings.

11. The Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation, but will do so only if the Commission requests such a memorandum in advance of the evidentiary hearing for this case. Each party to

the case shall be served with a copy of any such memorandum and shall be entitled to submit to the Commission, within five business days of receipt of Staff's memorandum, a responsive memorandum that shall also be served on all parties. All memoranda submitted to the Commission under the terms of this paragraph shall be considered privileged in the same manner as are settlement discussions under the Commission's rules and shall thus be maintained on a confidential basis by all parties. Such memoranda shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding, whether or not the Commission approves and adopts this Stipulation. The contents of any memorandum submitted to the Commission under the terms of this paragraph by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation, whether or not the Commission approves and adopts this Stipulation.

12. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests about the Stipulation. The Staff shall, however, to the extent reasonably practicable, provide the other parties to this case with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested.

13. As noted in Paragraph 9 above, the Staff will provide its testimony in support of the Joint Application, the Territorial Agreement and this Stipulation at the evidentiary hearing scheduled in this case for March 31, 2000.

WHEREFORE, the Parties respectfully request that the Commission issue its Order approving the Joint Application, the Territorial Agreement and this Stipulation.

Respectfully Submitted,

Fred Boeckmann by KRK
Fred Boeckmann MO Bar No. 24762
City Counselor
City of Columbia
P.O. Box N
Columbia, MO 65205
(573) 874-7223

Attorney for the
City of Columbia

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(573) 751-1304

Attorney for the Office
of the Public Counsel

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 20th day of March 2000.

Keith R. Krueger
Keith R. Krueger