

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
Jefferson City  
June 26, 1986

CASE NO. WA-86-58

Don Jacques, Villa Park Heights Water Company, Route Four, Box 883, Springfield, MO 65802  
Gary Duffy, Attorney at Law, P.O. Box 456, Jefferson City, MO 65102  
Turner White III, Attorney at Law, 301 E. Central, Springfield, MO 65802  
Office of Public Counsel, P.O. Box 7800, Jefferson City, MO 65102

Enclosed find certified copy of ORDER in the above-numbered case.

Sincerely,

*Harvey G. Hubbs*

Harvey G. Hubbs  
Secretary

uncertified copy:

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

CASE NO. WA-86-58

In the matter of the application of Villa Park Heights Water Company for permission, approval and a certificate of convenience and necessity authorizing it to construct, install, own, operate, control, manage and maintain a water system for the public located in an unincorporated area in Greene County, Missouri.

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**APPEARANCES:** Gary W. Duffy, Attorney at Law, Hawkins, Brydon & Swearngen, P.C., P. O. Box 456, Jefferson City, Missouri 65102, for Villa Park Heights Water Company.

Turner White III, Attorney at Law, P. O. Box 551, 301 East Central, Springfield, Missouri 65801, for the City of Springfield, Missouri.

Carol L. Bjelland, Assistant Public Counsel, P. O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the Public.

Angela D. Turner, Assistant General Counsel, P. O. Box 360, Jefferson City, Missouri 65012, for the Staff of the Missouri Public Service Commission.

REPORT AND ORDER

On September 25, 1985, Villa Park Heights Water Company (Applicant or VPH) filed this application seeking permission, approval and a certificate of convenience and necessity to construct, install, own, operate, control, manage and maintain a water system for the public located in an unincorporated area in Greene County, Missouri. By order dated October 25, 1985, the Commission directed its Secretary to send notice of this order to the publisher of each newspaper located in the proposed service area in Greene County as listed in the Newspaper Directory of the current Official Manual of the State of Missouri; to each state representative and state senator whose district includes any portion of the proposed service area; to the county commission of Greene County; and to the mayor of the City of Willard into

which a small portion of the proposed service area extends. The Commission set a deadline of November 28, 1985, for any interested party to file an application to intervene in this matter. On November 21, 1985, the City of Springfield, Missouri (City), filed its application to intervene herein. By order dated December 6, 1985, the Commission set this matter for hearing on January 21, 1986. On January 9, 1986, VPH moved that the hearing date be changed. On January 13, 1986, the Commission changed the hearing date to April 7, 1986, on which date this hearing was held. The parties waived the reading of the transcript pursuant to Section 536.080(2), RSMo 1978. On April 30, 1986, VPH filed its initial brief. On May 19, 1986, the City and the Commission's Staff (Staff) filed their respective briefs. On May 20, 1986, the Office of the Public Counsel (Public Counsel) filed its brief and on May 27, 1986, VPH filed its reply brief.

#### Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence on the whole record, makes the following findings of fact.

VPH is a Missouri corporation organized and existing under the laws of the State of Missouri with its principal office and place of business located at Route 4, Box 883, Springfield, Missouri 65802. It is a public utility under the jurisdiction of this Commission and presently provides water and sewer service in an unincorporated area of Greene County, Missouri, to approximately 550 water customers and 55 sewer customers.

VPH filed six "exhibits" with its verified application which were incorporated in said application by reference. The first of these is a certified copy of its certificate of incorporation and its articles of incorporation. The second of these is a certified copy of its certificate of corporate good standing. Copies of both of these were entered as attachments to Exhibit 1 at the hearing. The third of these is a metes and bounds description of the area of proposed certification. This description was later amended and accepted as Exhibit 5 at the

hearing. The fourth of these is a plat map of the area of proposed certification. This map was later amended and accepted as Exhibit 6 at the hearing. The fifth of these is a feasibility study which was later amended and accepted as Exhibit 7 at the hearing. The sixth of these is a list of more than ten names and addresses of individuals residing or owning land in the area of proposed certification.

In its application VPH stated that no central water supply service, regulated or unregulated, is available in the area of proposed certification.

Following its initial application, VPH discovered that part of the area of proposed certification had been annexed by the City. VPH amended its application to exclude the annexed portion and add an additional portion mostly in Section 32. Exhibit 5, entered at the hearing, is an amended metes and bounds description of the altered area of proposed certification. Exhibit 6, entered at the hearing, is a scale map of the altered area of proposed certification.

At the hearing Mr. Don Jacques, president of VPH, testified as to the history and the finances of the Company as well as its proposal for serving the requested area of certification.

VPH was established as a water company about fifteen years ago by Tom Smith, since retired, who sold the Company to Bethesda Ministries of Colorado Springs on May 29, 1985. Mr. Smith had started another water company called Park Crest Water Company in the 1950s before selling it and starting VPH. The presently certificated area of VPH is northwest of Springfield and west of the airport. In this area a 600-home subdivision called The Meadows is being developed which will be served by VPH. The Meadows is being developed by a company associated with VPH.

VPH proposes to charge the same rate in the area of proposed certification as it charges in its presently certificated area. This rate is \$9.73 per month. The Applicant's plan for development of the area of proposed certification is to construct approximately two miles of six-inch and eight-inch pipe along Farm Road 94 from its intersection with U. S. Highway 160 until it becomes Farm Road 96 and



intersects with Farm Road 127. There are approximately 35 prospective customers in this section of the road. VPH estimates that the construction can be completed in approximately 30 to 60 days and will cost around \$24,000. These costs will be borne mostly by the prospective customers who will pay for all the construction costs but \$50 per lot. VPH projects a profit for the first three years of operation.

Mr. Jacques testified that VPH has a 1500-foot well and a water tower with a one-half million gallon storage capacity.

Exhibit 7 is an amendment to Applicant's feasibility study. Exhibit 7 was prepared under the supervision of Richard Scott who testified at the hearing. Mr. Scott is a consulting engineer with Scott Consulting Engineers of Springfield, Missouri. Mr. Scott indicated through Exhibit 7 and his testimony that the well and storage tank presently used by VPH have sufficient capacity to serve the area of proposed certification during the initial phase of VPH's planned expansion down the two miles of Farm Road 94/96. Exhibit 7 also outlines the recommended specifications for construction of the proposed water system to which Mr. Jacques testified his Company will adhere.

Mr. Jacques stated that shortly after assuming control of VPH he became aware that a group of people in what is now the area of proposed certification were interested in obtaining water service from VPH. Exhibit 4, which is an exhibit sponsored jointly by all the parties, is a stipulation as to how twelve of these people would testify had they appeared at the hearing. The facts as stipulated are that these twelve people have no source of state-approved water on their property or their water supply is a private well; that they desire a safe and adequate source of water since their present source, if any, is neither safe nor adequate; that the area surrounding their properties is generally suitable for development and is being developed residentially and has a need for a central water distribution system; and that they are willing to make a financial contribution to the Applicant pursuant to Applicant's tariffs to aid in the construction of the water mains and to pay the rates approved by the Commission for water service. It was stipulated that the

Reverend Loraine Mastrorio, one of the twelve listed in the stipulation, would have testified, had she appeared at the hearing, that she is presently boiling water for domestic consumption because her water has been found to be unsafe for human consumption.

Three of the twelve listed in the stipulation appeared at the hearing and were allowed to testify. They were Les Hughes, Orville Race and Kermit McMillan.

Mr. Hughes owns property in the area of proposed certification on Farm Road 94. He presently resides just outside the area in question but had lived within this area for 30 years. He supports this application because he has relatives and friends living in the area and he knows what trouble they are having with the wells they must use for their water supply. Because of caves in the area, it is hard to drill wells and he knows of people with bad water who must filter it, boil it and put "Clorox" in it. Mr. Hughes does not presently maintain a well on his property since he has sold the house and five acres around it and intends to run cattle on the remainder that he still owns.

Mr. Race resides within the area proposed to be certified on Farm Road 94. Mr. Race supports this application because his water is unsafe to drink and he must chlorinate it which he finds distasteful. He had to dig a well through many caves after his first well went bad and the water of this second well is also unfit for human consumption. He has no objection to paying the sum which Mr. Jacques testified would be required as the cost of extending water to this lot. The figure mentioned by Mr. Jacques was around \$900. Mr. Race stated that he would have no problem with paying \$300 in addition to that figure for line meter service. The witness testified that within the last sixty days prior to the hearing he was contacted by the City about water service and he informed them he did not care to drink the City's water because of the taste.

Mr. McMillan resides within the area proposed to be certificated on Farm Road 94. He supports this application because he is close to the boundary of the area presently certificated to VPH and would be the first hookup. He has a

shallow well which gets muddy and "weak" in the dry seasons. The witness testified that he would still prefer VPH's service to his own well even if the cost to extend the service were three or four times what he has been told is the estimated cost. He stated that if he had to drill a well it would be \$3,500 and he could not see how it could be more than that.

Exhibit 2 is an uncertified copy of Ordinance No. 851111 passed November 11, 1985, by the Board of Aldermen of the City of Willard, Missouri, granting a nonexclusive, twenty-year franchise to VPH for all of the south 200 feet of the southeast quarter of Section 35 and all of the south 200 feet of Section 36 in Township 30 North, Range 23 west, and all of the south 200 feet of Sections 31 and 32 in Township 30 North, Range 22 west in the City of Willard, Greene County, Missouri. Mr. Jacques testified that Exhibit 2 is a copy of the ordinance giving VPH this authority. The franchise is conditioned upon the approval thereof by a majority of the qualified voters of Willard in an election to have been held April 1, 1986. Mr. Jacques testified that the city attorney failed to file this matter in a timely fashion because he did not know the filing dates had changed. The city attorney has filed for the next possible election date which Mr. Jacques thought was in June. Willard is the sole city wherein VPH would operate in the area of proposed certification.

The Commission finds that the foregoing filings, exhibits and testimony, fulfill the filing requirements of the applicable statutes and the Commission's regulations with the exception of the necessity of showing a franchise granted by the City of Willard. It is immaterial whether the City of Willard statutorily is required to obtain the approval of its citizens in order to grant a franchise. The ordinance granting the franchise in question is conditioned upon such approval. Therefore, the Commission finds that this requirement has not been met and that VPH must provide a certified copy of the election results regarding the granting of the franchise in order to fulfill this requirement.

Of the four parties to this proceeding, three support the grant proposed certificate while one, the City, opposes it. The City argues that Applicant has not demonstrated a public need for the proposed service within the territory sought. The City feels that a fundamental issue herein is not whether C. can provide better service but whether there is a need for the territorial grant which the application seeks since there is no evidence establishing any need for service outside the corridor along Farm Road 94. Further, the City argues that no explanation was offered as to why all twenty of the residents and landowners listed in the original application were not listed in the stipulation as to testimony marked as Exhibit 4. The City concludes that an inference of withdrawal of support is consistent with their absence.

In response to this position, VPH argues that no Commission cases require that need be demonstrated for every square foot of territory sought. VPH concludes that development has not fully occurred in the area and the lack of a safe and adequate water service is likely one of the major reasons for this. Further, VPH argues that no negative inference should be drawn from the fact that eight of the individuals listed in VPH's original application were not listed in the stipulation as to testimony. The Applicant points out that the witnesses were equally available to the City and the City agreed to stipulate to the testimonial facts to be obtained from these witnesses to avoid the necessity of taking depositions. VPH states that it considers a dozen witnesses testifying to the same basic facts to be more than sufficient especially since not all of the original twenty persons could be available for depositions on the date set.

The City's second argument is that neither the fitness of VPH to serve the proposed territory nor the financial feasibility of the project has been proved. The City asserts that Applicant's financial fitness is suspect since Exhibit 8 shows a \$33,000 operating loss for the year ending December 31, 1985. Since Applicant proposes to charge the same rate in the proposed area as in its present area and will

subsidize each extension by the sum of \$50, the City cannot see how the addition of twenty new customers can do other than augment the loss.

The City questions that the project can be accomplished at the cost estimated by VPH which is \$2.00 per foot. The City cites the testimony of the engineering consultant, Mr. Scott, who testified at one point that were he asked to provide a cost per foot, it would be higher than \$2.00 per foot.

The City argues that it can provide the limited service needed at a cost that is greater than Applicant's estimated cost but which is a more realistic cost (\$13.00 per foot).

In presenting its case the City sponsored the testimony of David J. Christiano who is the Director of System Planning for the City Utilities of Springfield, Missouri. He testified about the urban services area concept which was adopted by the City in 1985. Exhibit 10 is a copy of the resolution adopting this concept. This concept has two major goals. These are to encourage developers by guaranteeing the availability of urban services and to provide for orderly development by continually updating the plan. Part of the urban services area is within the area of proposed certification. Potential customers within this urban services area can have the City's water service extended to their property, upon request, at the cost of \$13.00 per foot. Outside of the urban services area the provision of service would be taken up on a case-by-case basis but the witness stated that the Board of Public Utilities has never turned down such a request for extension. The cost still would be \$13.00 per foot.

The witness admitted that the cost of the extension of service to individuals outside the urban service area would be prohibitive because of the distance between the City's mains and the property of the prospective customers. The individual on Farm Road 96, marked as 18A on Exhibit 9, is just within the urban service area and is one of those proposed to be served by VPH in its initial phase. Mr. Christiano testified that it would cost approximately \$68,640 to extend service

to that customer at a cost of \$13.00 per foot. Even this price would not pay for the total cost of the extension which is subsidized in part by the City.

VPH, Public Counsel and Staff stressed the prohibitive cost of the extension of water service by the City as a major problem with relying upon the City to meet the present needs of the residents of the proposed service area. Staff points out that the development company run by Mr. Jacques has equipment and operators which VPH can use to lay the mains at a significantly lower cost.

Staff and VPH take issue with the City's argument that VPH lacks financial fitness. They point out that the \$33,000 operating loss shown on Exhibit 8 is largely a book item since \$30,792 of the loss is depreciation expense.

The Commission finds that there is evidence of need in the proposed service area. There is ample evidence that the people located on Farm Road 94/96 are having very real problems with their present water sources and that they desire a safe and adequate water supply. The Commission is of the opinion that the evidence of need does not have to be situated throughout the entire area sought. There is evidence that this is a developing area and the Commission feels that the Applicant showed reasonable prudence in deciding to apply for a slightly larger area in order to avoid the expense of repeated, frequent applications to the Commission for small strips of service area. The area sought is seven to eight square miles in size.

The Commission finds that the proposed expansion is economically feasible. The evidence shows that VPH, through its associated development company, has access to experienced personnel whose rate of pay is lower than that required for workers on public projects. The personnel at this development company have experience laying water and sewer mains at the development project which is located within the area presently certificated to VPH. The City itself has apparently inspected and approved the mains in this development. This development company also has the equipment necessary for the proposed extension. Mr. Jacques, in his capacity at the development firm, has obtained experience in pricing such projects. The consulting

engineer, Mr. Scott, testified that the extensions can be done for the price Mr. Jacques estimated, given Mr. Jacques' circumstances.

The Commission finds that VPH is qualified and financially able to serve the proposed service area. The evidence shows that the firm is experienced in the provision of water service and is reasonably healthy financially. The Commission agrees with the Staff and the Applicant that the loss shown on Exhibit 8 represents largely a book loss for depreciation.

The Commission finds that the needs of the public in the area in question were shown to be acute and that any service that could be rendered at this time by the City would be extremely costly due to the distance involved and the additional cost per foot.

In view of the foregoing, the Commission is of the opinion that the Applicant is qualified to provide the service proposed and that there is a need for said service. The Commission determines that the proposed certificate will promote the public convenience and serve the public necessity and that the proposed franchise is necessary or convenient for the public service. The Commission finds that the proposed service will not duplicate any existing water facilities in violation of law and the public interest.

#### Conclusions

The Missouri Public Service Commission has arrived at the following conclusions.

This application is subject to the jurisdiction of the Commission pursuant to Sections 386.020, 386.250 and Chapter 393, RSMo 1978, as amended. This application was filed pursuant to Section 393.170, RSMo 1978, as amended, and the filing requirements of Commission Rule 4 CSR 240-2.060(2). The Commission has found that the Applicant has complied with the requirements of said statute and Commission rule except for a showing of the required consent of the proper municipal authorities in Willard, Missouri. The Commission, therefore, determines that VPH must file with this Commission a certified copy of the election results regarding the granting of

the franchise. Should these results approve the ordinance passed by the Board of Aldermen of Willard, the contingency will be satisfied and the certificate will become effective. If said ordinance has been disproved by the voters of Willard, VPH has leave from this Commission to file an amended application removing from the requested area the portion within Willard.

Section 393.170, RSMo 1978, as amended, provides that:

(1) No...water corporation...shall begin construction of a...water system...without first having obtained the permission and approval of the commission.

(2) No such corporation shall exercise any right or privilege under any franchise hereafter granted...without first having obtained the permission and approval of the commission.

(3) The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service.

The Commission, pursuant to Section 393.170 is empowered to grant certificates upon a finding that the provision of the proposed service is necessary and convenient for the public service and would not duplicate existing facilities. State ex rel. Ozark Electric Cooperative v. Missouri Public Service Commission, 527 S.W.2d 390 (Mo. App. 1975).

The Commission has found that the Applicant is qualified and financially able to provide water service as requested herein; that there is a need for the service proposed; that the proposed service is economically feasible; that the proposed certificate will promote the public convenience and serve the public necessity; that the proposed franchise is necessary or convenient for the public interest; and that the proposed service will not duplicate existing water facilities.

The Commission concludes, therefore, that the proposed service should be permitted and that the certificate requested should be approved subject to the contingency outlined herein.



It is, therefore,

ORDERED: 1. That subject to the contingency outlined in this Report and Order, Villa Park Heights Water Company is granted hereby a certificate of public convenience and necessity as requested herein and is authorized to construct, install, own, operate, control, manage and maintain a water system for the public located in an unincorporated area in Greene County, Missouri.

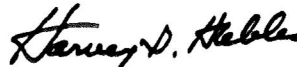
ORDERED: 2. That the Company shall amend its filed tariffs to reflect the change in its legal description and map of the area authorized within sixty (60) days of the effective date of this Report and Order.

ORDERED: 3. That the Company is directed hereby to abide by all the Commission's rules and regulations pertaining to the operation and maintenance of water systems.

ORDERED: 4. That nothing contained herein shall be construed as a finding by the Commission of the value for ratemaking purposes of the properties herein involved, or as an acquiescence of the Commission in the value placed upon said properties by the Applicant. The Commission reserves the right to consider the ratemaking treatment to be afforded these transactions and their cost of capital in any later proceeding.

ORDERED: 5. That this Report and Order shall become effective on the 8th day of July, 1986.

BY THE COMMISSION



Harvey G. Hubbs  
Secretary

(S E A L)

Steinmeier, Chm., Musgrave, Mueller  
and Hendren, CC., Concur.  
Fischer, C., Absent.

Dated at Jefferson City, Missouri,  
on the 26th day of June, 1986.

O'Donnell - Stephenson

CASE NO. W 9-86-58

[Signature]  
Chairman

[Signature]  
Commissioner

[Signature]  
Commissioner

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Commissioner

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Commissioner

*absent*

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STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, this 26th day of June 1986.

Harvey G. Hubbs

Harvey G. Hubbs  
Secretary