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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

September 7, 2000
Jefferson City, Missouri
Volume 1

In the Matter of the Joint)
Application of the Public Water)
Supply of District No. 2 of)
St. Charles County, Missouri) Case No.
And the City of Wentzille,) WO-2000-849
Missouri, for Approval of a)
Territorial Agreement Concerning)
Territory Encompassing Part of)
St. Charles County, Missouri.)

KEITH THORNBURG, Presiding,
REGULATORY LAW JUDGE.
KELVIN SIMMONS,
COMMISSIONER.

REPORTED BY:
MELINDA ADOLPHSON, CSR
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P R O C E E D I N G S

(EXHIBIT NOS. 1 THROUGH 3 WERE MARKED FOR IDENTIFICATION BY THE REPORTER.)

JUDGE THORNBURG: This case is Case No. WO-2000-849, and it's In the Matter of the Joint Application of the St. Charles County Water District No. 2 in the City of Wentzville for Approval of a Territorial Agreement Concerning Territory in St. Charles County, Missouri.

My name is Keith Thornburg. I'm a Regulatory Law Judge for the Public Service Commission. And we also have a Commissioner here today, Commissioner Simmons, sitting in for this hearing.

At this time I'd like to take entries of appearance on the record. I assume you've already completed a written entry of appearance. So if you will just state your name and the party or parties that you're representing.

For the Water District and City of Wentzville?

MR. STEWART: May it please the Commission. Charles Brent Stewart of the law firm of Stewart and Keevil, L.L.C., 1001 Cherry Street, Suite 302, Columbia, Missouri 65201, appearing on

1 behalf of the Joint Applicants, Public Water Supply
2 District No. 2 of St. Charles County, Missouri and
3 the City of Wentzville, Missouri.

4 JUDGE THORNBURG: Thank you, Mr. Stewart.
5 And for the Staff?

6 MR. SNODGRASS: Yes. Good afternoon,
7 Judge. Good afternoon, Commissioner. My name is
8 Cliff Snodgrass. I represent the interest of the
9 Staff of the Missouri Public Service Commission.
10 My mailing address is the Governor's Office
11 Building, P.O. Box 360, Suite 800, 200 Madison
12 Street, Jefferson City, Missouri 65101. Thank you,
13 sir.

14 JUDGE THORNBURG: And for the Office of
15 the Public Counsel?

16 MR. COFFMAN: Thank you. My name is
17 John B. Coffman. I'm appearing on behalf of the
18 Office of the Public Counsel, P.O. Box 7800,
19 Jefferson City, Missouri 65102.

20 JUDGE THORNBURG: Thank you.

21 I understand we marked exhibits off the
22 record prior to the start of the hearing, and I
23 assume we'll be introducing those in a few
24 moments.

25 Mr. Stewart, do you have any opening

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1 statements for the District and the City?

2 MR. STEWART: Thank you, Judge, I do
3 briefly.

4 As the Commission is probably aware, the
5 water territorial agreement legislation was passed,
6 I believe, in 1991. Then representative Joel
7 Driscoll, the Public Service Commission at that
8 time and others were looking for a way to deal with
9 problems facing cities, water districts, and in
10 some instances even their own water companies as
11 cities would expand through annexation or as areas
12 in the more rural areas would be developed.

13 And one of the problems is all of these
14 entities were fighting over new customers for
15 obvious reasons. And the General Assembly had just
16 passed, a few short years before that, an
17 electrical supplier territorial agreement law that
18 had been working very well on the electrical side.

19 And so at that time in 1991 Representative
20 Driscoll and others sponsored a bill. It's bound
21 and codified in Section 247.172 of the Revised
22 Statutes, that allowed entities such as the joint
23 applications in this case to become before the
24 Missouri Public Service Commission with an agreed
25 to service area boundary agreement, and ask the

1 Commission to review that. And if they found it
2 not detrimental to the public interest, to go ahead
3 and approve that.

4 In essence what it would do is set the
5 service area boundaries for the parties to the
6 agreement, but it would not affect any other
7 supplier not a part to the agreement. That's what
8 we have in front of the Commission today. I
9 believe we filed the agreement on June 26, year
10 2000. The agreement hopefully speaks for itself.
11 It purports to -- or it attempts to divide the
12 service territory between the City of Wentzville
13 and Public Water Supply District No. 2 out of
14 St. Charles County.

15 There is one matter that I do need to
16 bring to the Commission's attention, and that
17 involves page 5 of the agreement itself. It came
18 to my attention after filing that we have a
19 typographical error. Paragraph 7 lists a date in
20 the second -- or third sentence of May 1st, 2000
21 for certain things to have occurred before the
22 agreement would be effected. Obviously, that's a
23 typographical error. It should read 2001.

24 And I have discussed how to deal with that
25 problem with Staff, and I believe and what I would

1 suggest is me making that statement on the record
2 that the agreement should be amended to read 2001,
3 not 2000 as a typographical error and just possibly
4 have the Commission note that in the Order that the
5 parties had attempted to rectify that mistake on
6 the record.

7 If that's acceptable, that's fine. If
8 necessary, we can go to the -- you know, possibly
9 go back to the City Council and the District Board
10 and execute an additional page, but I thought under
11 the circumstances it might be the simplest thing
12 and certainly is satisfactory to our side of the
13 two parties if we just made that note on the record
14 and hopefully got it clarified in the Report and
15 Order.

16 With that, Judge, I don't intend to be
17 cross-examining the staff witness. I think the
18 procedure we're following here -- this is kind of
19 new for me. This is the first water agreement I've
20 been involved with -- but the procedure followed is
21 something similar to what, I believe, the
22 Commission followed in the City of Columbia water
23 district territorial agreement, Case WO-2000-472.
24 And I plan to sit back and watch what the Staff
25 presents and don't plan to have any questions of

1 the Staff witness. Thank you.

2 JUDGE THORNBURG: Mr. Keevil, I had noted
3 that apparent error in the agreement also. And I
4 don't have a -- I don't think I'm going to have a
5 problem addressing it the way you proposed, but you
6 might want to consider what the authority of the
7 municipality is in a political subdivision in the
8 State of Missouri, and whether or not you would
9 want to supplement that agreement with some type of
10 authorization from the respective boards.

11 I'd hate to see a few years down the road
12 have anybody question the validity of the
13 agreement. We can certainly make it clear on the
14 record what the supposed intent was. But there's
15 quite a bit of authority indicating that an entity
16 like municipality or a water district can only act
17 through its board, and I would have some concerns,
18 but we can make that note on the record.

19 And if you would want to obtain
20 resolutions authorizing or noting that intent and
21 supplement the record, we can do that also. And if
22 you will think about that and let me know by the
23 end of the proceeding today, I can hold this open
24 for those resolutions.

25 MR. STEWART: Judge, the first thing, I'm

1 not Mr. Keevil. He weighs about --

2 JUDGE THORNBURG: Oh, I'm sorry.

3 Mr. Stewart. I apologize.

4 MR. STEWART: That's quite all right. The
5 other, if I could, I spoke with Mr. Dougherty
6 earlier, have the City and the Board, when they
7 approve the documents, what was the date?

8 MR. DOUGHERTY: The water district board
9 approved the document as 2001. Actually, I believe
10 the year 2000 document was an earlier draft.
11 Somehow didn't proofread it. It was not changed.
12 Bill and I talked about changing it prior to both
13 board's approval of changing it to 2001 because we
14 were -- time was slipping away.

15 MR. STEWART: My thought is, Judge, that
16 the agreement itself is not effective until it's
17 approved by the Commission. That's both under its
18 own terms and also by the statute and would not
19 become binding on the parties if the Commission
20 didn't approve it. And I would see that the
21 Commission has the authority in its Order in
22 approving the agreement to say, and based on
23 representations of the parties, that you approve
24 the agreement with that date changed to 2001. And
25 I think that would be -- would have the force of

1 law and would be sufficient.

2 John, you're --

3 JUDGE THORNBURG: I think it would be more
4 clear if an officer of each party extended the date
5 or something was filed to indicate that that was an
6 error.

7 John -- Mr. Coffman?

8 MR. COFFMAN: Public Counsel certainly has
9 no objection to this or wouldn't if the date were
10 changed. Perhaps the way to make sure it gets into
11 the record would be to have some late-filed
12 document that would be offered after this hearing,
13 and that the parties would have sufficient number
14 of days to respond to it. If no one objected,
15 then --

16 MR. STEWART: That's what I was thinking,
17 too.

18 And, in fact, Judge, why don't I do this:
19 If you would reserve a late-filed exhibit number, I
20 will go back to both my clients and have them
21 execute a document that would change that date and
22 file that as quickly as I could.

23 JUDGE THORNBURG: I would feel better
24 about that.

25 MR. STEWART: And I think that might be

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1 the safest way.

2 JUDGE THORNBURG: And how often does your
3 Water District Board meet?

4 MR. STEWART: Monthly, if I remember
5 correctly.

6 MR. DOUGHERTY: Yes. They meet the first
7 Wednesday of each month. The next meeting would be
8 the first Wednesday in October.

9 MR. STEWART: How about the City of
10 Wentzville?

11 MR. BENSING: Out next official board
12 meeting would be September 13.

13 MR. STEWART: Where do we run in terms of
14 the operation of law date?

15 JUDGE THORNBURG: I think you can just
16 supplement the record, and I can go ahead and
17 continue with the Order. I think it's just
18 important to have the record clear.

19 MR. STEWART: We will do that then.

20 MR. SNODGRASS: Just for the record, Staff
21 has absolutely no objection to the suggestion that
22 Public Counsel had and Counsel Stewart of how to
23 handle this matter.

24 JUDGE THORNBURG: We have Exhibits 1
25 through 3?

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1 MR. SNODGRASS: Yes.

2 JUDGE THORNBURG: Okay. Exhibit 4 will be
3 reserved for the filing by the Joint Applicant and
4 that will be in the nature of clarification,
5 resolution consent of the officers that the date
6 should have been 2001 or if not, then it's extended
7 to 2001.

8 MR. STEWART: I'm not sure of the exact
9 mechanics of the form it would take, but that would
10 be when it would be effected.

11 JUDGE THORNBURG: Thank you.

12 I have seen things done with the
13 resolution. You can certainly do that. I have
14 seen things done where the board authorizes its
15 officers, designated officers, mayor, city manager,
16 to execute all necessary documents related to the
17 transaction. With that resolution, then they can
18 just simply execute an addendum to this. But I
19 don't know if there are other documents other than
20 the agreement to do that.

21 But we'll reserve that exhibit number, and
22 you can just supplement the record with that, and
23 I'll note that that's going to be done. And I
24 thought, depending on how the hearing goes today, I
25 can go ahead and prepare an Order also. I would

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1 just be more comfortable having that part of the
2 public record.

3 MR. STEWART: That's fine. And we will
4 get that to the Commission just as soon as
5 possible.

6 JUDGE THORNBURG: Mr. Coffman, do you have
7 an opening statement?

8 MR. COFFMAN: No. Not other than to say
9 that we see no problem as far as the public
10 interest. Neither of these entities are regulated
11 by the Commission, and no customers are shifted, no
12 rates are changed. We have no problem with it
13 whatsoever.

14 JUDGE THORNBURG: Thank you.

15 Mr. Snodgrass, do you have an opening
16 statement?

17 MR. SNODGRASS: No, Judge, I do not. The
18 only thing I would say in the nature of a real
19 quick remark, is that we have an able witness here
20 today, Dale Johansen, has many years of experience
21 with the Commission. He's looked over the
22 documents, which we're going to present to you and
23 Commissioner Simmons today. We feel that these
24 documents and the evidence of record will indicate
25 that this transaction is not detrimental to the

1 public interest as required by the statute.

2 JUDGE THORNBURG: Thank you very much.

3 Mr. Snodgrass, you may proceed by calling your
4 first witness.

5 MR. SNODGRASS: Thank you, Judge. We call
6 Dale Johansen to the stand for the Staff.

7 (WITNESS SWORN.)

8 JUDGE THORNBURG: Mr. Snodgrass, you may
9 proceed.

10 DALE JOHANSEN, being first duly sworn, testified as
11 follows:

12 DIRECT EXAMINATION BY MR. SNODGRASS:

13 Q. All right. Mr. Johansen, in an effort not
14 to be repetitive, but in an effort to be thorough,
15 would you please state your name and business
16 address for the record, sir?

17 A. Yes. It's Dale W. Johansen,
18 J-o-h-a-n-s-e-n, Governor Office Building, Suite
19 500, 200 Madison Street, Jefferson City, Missouri
20 65101.

21 Q. Mr. Johansen, for whom do you work and in
22 what capacity, sir?

23 A. I'm employed by the Missouri Public
24 Service Commission as manager of the Water and
25 Sewer Department in the Utility Operations

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1 Division.

2 Q. And how long have you worked at the
3 Commission in total years?

4 A. Nearly 18 years.

5 Q. And how long have you been in your current
6 position?

7 A. A little over five years.

8 Q. Have you previously testified before this
9 Commission, sir?

10 A. Yes, I have. I have testified before the
11 Commission on several occasions, and particularly
12 in three previous cases involving Commission
13 approval of water service territorial agreements.

14 MR. SNODGRASS: All right. Along that
15 line of thought, Judge, may I approach the witness
16 with this exhibit?

17 JUDGE THORNBURG: Yes, you may.

18 BY MR. SNODGRASS:

19 Q. Dale, I've handed you what's been marked
20 by the court reporter as Exhibit No. 1. I'd ask
21 you to look at that document. Are you familiar
22 with it?

23 A. Yes, I am.

24 Q. Would you tell the Judge and Commissioner
25 Simmons what it is?

1 A. It's a copy of the joint application for
2 approval of a territorial agreement that was
3 submitted by Public Water Supply District No. 2 of
4 St. Charles County and the City of Wentzville. And
5 attached to the application as Appendix A is a copy
6 of the subject territorial agreement between the
7 District and the City.

8 Q. All right. I have another exhibit. Sir,
9 I've shown you what's been previously marked by the
10 reporter as Exhibit No. 2. I'd ask you to look at
11 that document, please?

12 Could you tell the Commission and the
13 Regulatory Law Judge what it is?

14 A. Yes. This is the supplemental Appendix B,
15 which was filed by the joint applicants on July 11,
16 and it consists of the water service area boundary
17 line description that applies to the territorial
18 agreement.

19 Q. All right. Thank you, sir. Let me show
20 you a final exhibit here, ask you to look it over,
21 please.

22 A. Okay.

23 Q. Would you tell the Regulatory Law Judge
24 and the Commissioner what Exhibit No. 3 is for the
25 record?

1 A. Yes. This is the unanimous stipulation
2 and agreement that was filed in the case on
3 August 24, 2000 by the Staff, the Joint Applicants
4 and the Office of Public Counsel.

5 Q. Thank you, sir. In your capacity as
6 manager of the Commission's Water and Sewer
7 Department, have you had an opportunity to review
8 the joint application and the territorial agreement
9 you referred to earlier?

10 A. Yes, I have.

11 Q. And would you briefly describe your review
12 of these documents?

13 A. I first conducted an overall review of the
14 provisions of both the joint application and the
15 territorial agreement, and I then compared the
16 provisions of the application and the agreement to
17 the statutory requirements that are applicable to
18 water service territorial agreements.

19 Q. Now, regarding the statutory requirements
20 that you just mentioned on the record, where are
21 those found?

22 A. They are found in Chapter 247, Section 172
23 of the Revised Statutes of Missouri.

24 Q. And briefly, Mr. Johansen, would you
25 summarize the applicable statutory requirements as

1 you understand them in this transaction?

2 A. Certainly. First, the territorial
3 agreement must specifically designate the
4 boundaries of the water service areas of each
5 provider subject to the agreement. Second, the
6 agreement must specify the powers granted by the
7 entities subject to the agreement to operate within
8 one another's corporate boundaries.

9 Third, the Commission's approval of a
10 territorial agreement shall in no way affect or
11 diminish the rights and duties of a water supplier
12 that is not a party to the agreement to provide
13 service within the boundaries designated.

14 And fourth, Commission approval of a
15 territorial agreement may come only after an
16 evidentiary hearing is held, and after the
17 Commission determines the approval of the agreement
18 is not detrimental to the public interest.

19 Q. Does the not detrimental to the public
20 interest the standard for approval --

21 A. Yes, that's correct.

22 Q. -- in your understanding?

23 A. Yes.

24 Q. Now, based on your review of the joint
25 application and the territorial agreement, is it

1 your opinion that they satisfy the applicable
2 statutory requirements?

3 A. Yes, it is. First, Exhibits A and B
4 attached to the agreement designate the boundaries
5 of the water service areas of the District and the
6 City. And additionally, Supplemental Appendix B,
7 which was previously marked today as Exhibit 2,
8 which the City and District filed on July 11,
9 further defines the boundary line between the two
10 service areas.

11 Second, the agreement clearly sets out the
12 powers that each party grants to the other to
13 operate in their respective corporate boundaries.

14 Third, the joint application contains a
15 provision acknowledging that the agreement in no
16 way affects or diminishes the rights of any water
17 service provider that is not a party to the
18 agreement.

19 And fourth, as a result of these three
20 items and additional items I will cover later, it
21 is my opinion that Commission approval of the
22 agreement would not be detrimental to the public
23 interest.

24 Q. All right. Mr. Johansen, are you aware of
25 any customer inquiries or complaints that have been

1 received regarding the application or the
2 territorial agreement in this case?

3 A. No. To my knowledge the Staff has not
4 received any customer contacts of any kind
5 regarding the application or the agreement. And I
6 base this upon responses to inquiries that I made
7 both of my staff and the Commission's Consumer
8 Services Department staff regarding customer
9 contacts they may have received about the case.

10 And additionally, had such contacts been
11 received by other members of the staff, I'm quite
12 sure I would have been aware of those contacts.

13 Q. All right. Along that line of thought,
14 will any existing customers of either the District
15 or the City that's been identified in this case
16 experience a change in water service providers if
17 the Commission implements this agreement?

18 A. No, they will not. As noted in the joint
19 application, the agreement affects only new
20 customers and no existing customers of either the
21 District or the City will have their water service
22 supplier changed.

23 Q. All right. Thank you, sir. Is there
24 anything else you think the Commission should
25 consider in reaching its decision today on whether

1 to approve the joint application and territorial
2 agreement?

3 A. Yes. There are three additional items
4 that I believe the Commission should consider.
5 First of all, I believe it's clear that
6 implementation of the agreement will enable the
7 District and the City to avoid wasteful and costly
8 duplication of facilities and services in the areas
9 that are subject of the agreement.

10 Second, implementation of the agreement
11 will also preclude any destructive competition that
12 might otherwise arise between the District and the
13 City in the subject service areas. And I believe
14 that both of these items are clearly to the benefit
15 of the customers of the District and the City and
16 should thus be given positive consideration by the
17 Commission.

18 And lastly, I would also like to ask the
19 Commission to note that it is my opinion that each
20 of the parties to the agreement have the ability to
21 provide adequate service to the customers in the
22 service areas that are the subject of the
23 agreement.

24 Q. All right. Now directing your memory of
25 this transaction to, I believe, what's been marked

1 as Exhibit No. 3, which is the stipulation and
2 agreement between the parties here today, did you
3 look over that document earlier, sir?

4 A. Yes.

5 Q. Are you familiar with its terms?

6 A. Yes, I am.

7 Q. And did you participate in the development
8 of that agreement and document?

9 A. Yes, I did.

10 Q. Do you recommend to this Commission that
11 they approve the terms of that stipulation and
12 agreement marked Exhibit 3?

13 A. Yes, that is my recommendation.

14 Q. And do you have anything further to add at
15 this time, Mr. Johansen?

16 A. No, I do not.

17 MR. SNODGRASS: I have nothing further,
18 Judge. Staff would respectfully ask that
19 Exhibits 1 through 3 previously marked and
20 identified be admitted into the record. And we
21 would tender this witness for cross-examination.

22 JUDGE THORNBURG: Are there any objections
23 to the admission of the exhibits?

24 Hearing none, Exhibits 1, 2 and 3 will be
25 admitted into the record.

1 (EXHIBIT NOS. 1, 2 AND 3 WERE RECEIVED AND
2 MADE A PART OF THE RECORD.)

3 JUDGE THORNBURG: Mr. Stewart, do you have
4 any questions for this witness?

5 MR. STEWART: No questions. Thank you.

6 JUDGE THORNBURG: Mr. Coffman?

7 MR. COFFMAN: No questions.

8 JUDGE THORNBURG: Commissioner Simmons?

9 COMMISSIONER SIMMONS: No questions.

10 JUDGE THORNBURG: I have no questions.

11 Mr. Johansen, you may be excused. Thank
12 you for your testimony.

13 (WITNESS EXCUSED.)

14 JUDGE THORNBURG: Are there any further
15 witnesses, Mr. Snodgrass?

16 MR. SNODGRASS: None, Judge.

17 JUDGE THORNBURG: Mr. Stewart?

18 MR. STEWART: None, your Honor.

19 JUDGE THORNBURG: Mr. Coffman?

20 MR. COFFMAN: No.

21 JUDGE THORNBURG: Mr. Stewart, I was
22 looking at the agreement as we were talking about
23 it, and it was filed without -- we don't have any
24 particular resolutions or authorizations. So it
25 might be convenient simply to file an addendum to

1 the agreement executed by both parties just
2 restating paragraph 7. It might be the simplest
3 way to do that. And if the mayor and the president
4 is still available to do that, you might be able to
5 do that fairly promptly, and we'll hold Exhibit 4
6 open for that.

7 Did any of the parties anticipate any
8 objections to filing an addendum? I don't hear
9 any.

10 MR. COFFMAN: Do not anticipate.

11 JUDGE THORNBURG: After that's filed, the
12 parties will have -- well, I'll just say from the
13 date of the filing seven days to file anything in
14 response to that. And if I don't have any
15 objections, we'll go ahead and prepare an Order for
16 the Commission's consideration.

17 Any further statements?

18 MR. SNODGRASS: Nothing from Staff, Judge.

19 JUDGE THORNBURG: Mr. Stewart?

20 MR. STEWART: No.

21 JUDGE THORNBURG: And Public Counsel?

22 MR. COFFMAN: No.

23 JUDGE THORNBURG: Thank you very much for
24 being here today and that will adjourn the
25 hearing.

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MARKED REC'D

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Joint Application for Approval of a
Territorial Agreement 3 23

EXHIBIT NO. 2
Supplemental Appendix B 3 23

EXHIBIT NO. 3
Unanimous Stipulation and Agreement 3 23

EXHIBIT NO. 4
Correction to date *

* Late Filed Exhibit