

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

In the Matter of the Application of Innsbrook)
Utilities, LLC, for a Certificate of Convenience)
and Necessity Authorizing it to Own, Operate,)
Control, Manage, Improve, and Maintain a) **Case No. WA-2008-0018, et al.**
Water and Sewer System for the Public,)
Located in an Incorporated Area of Warren)
County, Missouri)

**ORDER GRANTING INTERVENTION AND SETTING PREHEARING
CONFERENCE**

Issue Date: September 5, 2007

Effective Date: September 5, 2007

On July 13, 2007,¹ pursuant to Section 393.170, RSMo 2000, and Commission Rules 4 CSR 240-2.060, 4 CSR 240-3.305, and 4 CSR-3.600, Innsbrook Utilities, LLC, (“Innsbrook”) filed applications requesting the Commission grant it authority to own, operate, control, manage, improve and maintain a water and sewer system for the public in an incorporated area of Warren County, Missouri. Specifically, the water and sewer service is to be provided to the Village of Innsbrook, a community composed of a mixture of single family homes and recreational chalets.

On July 17, the Commission issued notice for both matters, one application being for the water system and one for the sewer system, and set an intervention date of August 6. On August 22, Public Water Supply District No. 2 of St. Charles County, Missouri (“Water

¹ All dates throughout this order refer to the year 2007 unless otherwise noted.

District”) filed an application to intervene in both cases out of time.² The Water District states that it provides water and sewer service at retail and at wholesale to customers located in both St. Charles and Warren counties.

The Water District asserts that good cause exists for granting its late-filed intervention request because it did not receive direct notice of the case, and that once it learned of the case by means of a newspaper article, it moved as quickly as possible to seek intervention. The Water District claims that it satisfies the intervention requirements of Commission Rule 4 CSR 240-2.075 because the proposed area for Innsbrook’s water and sewer system certification request lies wholly within its authorized service territory and that customers being served by the Water District lie within Innsbrook’s proposed service area. According to the Water District, one of those customers is the “Innsbrook Owner’s Association.”

Although the term “good cause” is frequently used in the law,³ Commission Rule 4 CSR 240-2.075 does not define it. Therefore, it is appropriate to resort to the dictionary to determine its ordinary meaning.⁴ Good cause “generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”⁵ Similarly,

² On August 24, the Commission consolidated the two cases, designating Case No. WA-2008-0018 as the lead case.

³ *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

⁴ See *State ex rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. 1986) (in absence of legislative definition, court used dictionary to ascertain the ordinary meaning of the term “good cause” as used in a Missouri statute); *Davis*, 469 S.W.2d at 4-5 (same).

⁵ *Black’s Law Dictionary* 692 (6th ed. 1990).

“good cause” has also been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”⁶

Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”⁷ And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁸

The Commission properly issued notice in this case. Although the Water District was 18 days late in seeking intervention, it correctly notes that the Commission’s Staff is still waiting to receive a feasibility study from Innsbrook before it can proffer a recommendation and that granting it intervention would not delay the proceeding. Additionally, no party has opposed the Water District’s request.

The Commission will grant the Water District’s request finding that good cause has been shown to allow its late intervention. Because this matter is now at issue, the Commission shall set a prehearing conference and direct the filing of a procedural schedule.

IT IS ORDERED THAT:

1. Public Water Supply District No. 2 of St. Charles County, Missouri is granted intervention in this matter.

⁶ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

⁷ *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

2. The parties shall appear at a prehearing conference to be held on September 13, 2007, beginning at 10:00 a.m. The prehearing conference will be held in Room 310 at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, a building that meets the accessibility standards required by the Americans With Disabilities Act. Any person needing additional accommodations to participate in this prehearing conference should call the Public Service Commission's Hotline at 1-800-392-4211 or dial Relay Missouri at 711 prior to the conference.

3. Any party that wishes to participate in the conference by telephone may do so by calling (573) 522-8022 at the time set for the conference. If any party believes they will require the phone bridge for a period longer than two hours, they should notify the Regulatory Law Judge by calling 573-522-8459 no later than September 10, 2007.

4. The parties shall jointly prepare and file a procedural schedule no later than September 20, 2007.

5. This order shall become effective on September 5, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)
Harold Stearley, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 5th day of September, 2007.

⁸ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).