

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. 9 of Boone County, Missouri, for approval of a)
territory encompassing parts of Boone County and)
Callaway County, Missouri.)
)

Case No. WO-93-113

APPEARANCES

Fred Boeckmann, City Counselor, City of Columbia, Post Office Box N, Columbia, Missouri 65205, for the City of Columbia, Missouri.

J. Turner Jones, Attorney at Law, 11 North Seventh Street, Columbia, Missouri 65201, for Public Water Supply District No. 9 of Boone County, Missouri.

John B. Coffman, Assistant Public Counsel, Office of Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of Public Counsel and the public.

Thomas H. Luckenbill, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri, for the staff of the Missouri Public Service Commission.

HEARING EXAMINER: Edward C. Graham.

REPORT AND ORDER

On September 24, 1992, the City of Columbia, Missouri (City) and Public Water Supply District No. 9 of Boone County, Missouri (District) (jointly referred to as Applicants) filed a Joint Application pursuant to Section 247.172, R.S.Mo. (Supp. 1991), seeking approval of a Territorial Agreement entered into by Applicants. On September 30, 1992, the Commission issued its Order And Notice that its Records Department send a copy to the Boone County Commission and that its Information Officer notify members of the General Assembly representing the service area and newspapers located within the service area. Also, an intervention date of October 20, 1992 was ordered and a procedural schedule was adopted. There were no intervenors. On October 30, 1992, the City filed direct testimony. On November 3, 1992, the Commission's Staff (Staff) filed direct testimony. On

November 4, 1992 the District filed its direct testimony. On December 1, 1992 a prehearing conference and evidentiary hearing were held with all parties appearing, including the Office of Public Counsel. At the evidentiary hearing the parties stipulated to the reception of all of the prefiled direct testimony and waived cross-examination.

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.

All parties are in agreement that the Territorial Agreement (Agreement) and its Exhibits 1 through 5 dated August 18, 1992, entered into by Applicants and attached to the Joint Application, should be approved by the Commission. A copy of the Territorial Agreement (without Exhibits 1 through 5) is attached to this Report And Order as Attachment A and is incorporated herein by reference. The Agreement specifically designates the boundaries of the water service areas of the City and the District. The 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 Agreement further provides for switching customers between the City and the District and requires the District to provide the same level of fire flows within its water service area within the city limits, or which are later annexed into the City, as are required of the City.

The Commission is of the opinion and finds that the Agreement will eliminate duplication of service, which will be a savings to the customers, and that it will allow both the City and the District to do the proper planning needed to provide safe and adequate service. Water utilities are very capital-intensive and duplication of facilities would unnecessarily burden the ratepayers

of the City and the ratepayers of the District. It would be particularly expensive for the City to expand into parts of the area designated in the Agreement as the District's service area because of differences in elevation. Also, the Commission is of the opinion and finds that the Agreement in no way affects or diminishes the rights and duties of any water supplier not a party to the Agreement to provide service within the boundaries designated in the Agreement. The City's water service area described in the Agreement includes areas currently served by Consolidated Water District No. 1, Public Water Supply District No. 1, Public Water Supply District No. 2 and Public Water Supply District No. 4.

The Commission specifically determines, for all these reasons, that the approval of the Agreement in total is not detrimental to the public interest and further finds that the designation of water service areas in the Agreement is in the public interest.

Conclusions of Law

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

The Missouri Public Service Commission has jurisdiction over the matters at issue in the Joint Application filed herein pursuant to Section 247.172, R.S.Mo. (Supp. 1991).

The intent of the General Assembly in enacting this section was to encourage voluntary agreements between and among public water supply districts, water corporations subject to the Missouri Public Service Commission's jurisdiction, and municipally-owned water utilities to displace competition to sell and distribute water which may result in duplication or inefficient use of facilities. The Commission concludes that when a proposed territorial agreement, such as the one presented in this matter, executes that legislative intent, it should be approved.

IT IS THEREFORE ORDERED:

1. That the Territorial Agreement entered into between the City of Columbia, Missouri, and Public Water Supply District No. 9 of Boone County, Missouri and attached hereto as Attachment A be approved hereby.

2. That the City of Columbia, Missouri and Public Water Supply District No. 9 of Boone County, Missouri be authorized hereby to execute all necessary documents and perform in accordance with the terms and conditions of the Territorial Agreement.

3. That this Report And Order shall become effective on the 15th day of December, 1992.

BY THE COMMISSION



Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch,
Perkins and Kincheloe, CC., concur.

Dated at Jefferson City, Missouri,
on this 4th day of December, 1992.

TERRITORIAL AGREEMENT
(City of Columbia-Water District No. 9)

THIS AGREEMENT, made and entered into this 18th day of August, 1992, by and between the CITY OF COLUMBIA, MISSOURI, a Municipal corporation, hereinafter called "CITY", and PUBLIC WATER SUPPLY DISTRICT NO. 9 OF BOONE COUNTY, MISSOURI, hereinafter called "DISTRICT":

W I T N E S S E T H:

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 consumer 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 boundary between the CITY and 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", both of which are incorporated herein by reference and made a part of this agreement as fully as if set out

verbatim, and that the aforesaid boundary line is hereafter referred to as the "Water Service Boundary Line". The territory located to the east of the Water Service Boundary Line and within the boundaries of the DISTRICT shall be deemed the water service area of the DISTRICT. The boundaries of the DISTRICT are described in Exhibit "3" attached hereto. The water service area of the CITY is described by metes and bounds in Exhibit "4" attached hereto and is shown on the map attached hereto as Exhibit "5".

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 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 outside its water service area 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, the DISTRICT shall continue to provide water service to those customers it has as of the date of this agreement outside its water service area but shall not provide water service to any new customers within the water service area of the CITY.

6. 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.

7. The DISTRICT shall provide within its water service area within the city limits, as said city limits now exist or may hereafter exist after future annexation, such water supply, storage and main capacity 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 standards being approximately 750 to 800 gallons per minute. Fire flows shall be determined by appropriate hydraulic modeling in the design stage and by actual fire flow tests by City personnel after mains are placed in service.

8. 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 within the city limits at locations approved by the CITY.

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

10. When additional areas of the DISTRICT are annexed into the CITY, the DISTRICT shall upgrade its water system in the

annexed area to the standards referred to in paragraph 7 above within two (2) years after annexation, except such upgrading shall not be required of the existing water system in the subdivisions within the DISTRICT which are in existence at the time of the execution of this agreement.

11. The extension of water mains by the DISTRICT within its water service area within the city limits shall be designed in accordance with the CITY standards, except for water mains which are 12 inches in size and smaller the same shall be designed in accordance with the ASTM-D2241 Standard.

12. 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.

13. That 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 bodies of both parties and approved by the Missouri Public Service Commission.

14. 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.

15. 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 gives not less than one (1) year prior written notice of termination of this agreement in which event this agreement shall terminate at the end of the then current term.

16. 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.

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

IN WITNESS WHEREOF, the parties have executed this agreement this 18th day of August, 1992.

CITY OF COLUMBIA, MISSOURI

BY:

Raymond A. Beck
RAYMOND A. BECK, City Manager

ATTEST:

Shirley S. Daniel
City Clerk

APPROVED AS TO FORM:

Fred Boechman
City Counselor

PUBLIC WATER SUPPLY DISTRICT
NO. 9 OF BOONE COUNTY, MISSOURI

BY: J. R. Richardson
President

ATTEST:

Sammy J. Jy
Clerk

STATE OF MISSOURI)
) SS.
COUNTY OF BOONE)

On this 18th day of August, 1992, before me, a notary public in and for said county and state, came RAYMOND A. BECK, City Manager, and LAUNA H. DANIEL, 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 District, and such persons duly acknowledged the execution of the same to be the act and deed of said District.

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

Phyllis A. Hardin
Notary Public

My commission expires:

July 4, 1993

PHYLLIS A. HARDIN
NOTARY PUBLIC STATE OF MISSOURI
BOONE COUNTY
MY COMMISSION EXP. JULY 4, 1993

STATE OF MISSOURI)
) SS.
COUNTY OF BOONE)

On this 24 day of August, 1992, before me appeared J. R. RICHARDSON, to me personally known, who, being by me duly sworn, did say that he is the President of PUBLIC WATER SUPPLY DISTRICT NO. 9 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 hereunto set my hand and affixed my official seal, at my office in Columbia, Missouri, the day and year first above written.

Pamela M. Kelley
Notary Public

My commission expires:

12.26.95

PAMELA M. KELLEY
NOTARY PUBLIC, STATE OF MISSOURI
COUNTY OF BOONE
My Commission Expires 12/26/95