

FORD, PARSHALL & BAKER, L.L.C.
ATTORNEYS AT LAW

HAMP FORD
JEFFREY O. PARSHALL
MICHAEL R. BAKER
SUSAN FORD ROBERTSON*
JEFFREY H. BLAYLOCK
DAVID W. WALKER
MARIAM DECKER, R.N.
EDWARD L. GUINN

P.O. Box 1097
609 EAST WALNUT STREET
COLUMBIA, MISSOURI 65205-1097

Telephone (573) 449-2613
Facsimile (573) 875-8154

ROBERT J. BUCKLEY**
JORDAN M. HUMPHREYS
DAVID A. TOWNSEND
CHRISTOPHER L. KESPOHL

*Also admitted in Illinois
**Also admitted in Kansas

personal e-mail address of Mr. Blaylock
jblaylock@fpb-law.com

October 18, 2001

FILED²

OCT 19 2001

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Missouri Public
Service Commission

Re: Case No.: WO-2002-17

In the matter of the application of the City of Hannibal, Missouri, and Public Water Supply District No. 1 out of Ralls County, Missouri, for approval of a Territorial Agreement encompassing part of Ralls County, Missouri.

Dear Mr. Roberts:

Enclosed for filing in the above-captioned cause, you will find an original and eight conformed copies of Second Joint Motion to Cancel Procedural Schedule And Stay Proceedings.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter. Please let me know if you have any questions.

Very truly yours,


JEFFREY H. BLAYLOCK

JHB:cai

Enclosures

cc: All counsel of record.

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

FILED²

OCT 19 2001

Missouri Public
Service Commission

In the Matter of the Application of the City of Hannibal,)
Missouri, and Public Water Supply District No. 1 of)
Ralls County, Missouri, for Approval of a Territorial)
Agreement Concerning Territory Encompassing Part)
of Ralls County, Missouri.)

Case No. WO-2002-17

**SECOND JOINT MOTION TO CANCEL PROCEDURAL SCHEDULE
AND STAY PROCEEDINGS**

COMES NOW the City of Hannibal, Missouri ("City"), by and through counsel, and on behalf and with the consent of the Staff of the Missouri Public Service Commission ("Staff"), the Public Water Supply District No. 1 of Ralls County, Missouri ("District") and the Office of the Public Counsel ("OPC"), and in support of the parties' Second Joint Motion to Cancel Procedural Schedule and Stay Proceedings, states and shows as follows:

1. On or about July 9, 2001, City and District filed their Application with the Public Service Commission seeking approval of a territorial agreement ("Agreement") entered into between the two entities on or about May 9, 2001.

2. Pursuant to Mo. Rev. Stat. §247.172.3 (2000), "[u]nless otherwise ordered by the Commission for good cause shown, the Commission shall rule on such applications not later than one hundred twenty days after the application is properly filed with the Secretary of the Commission." The 120-day deadline under Section 247.172.3 will expire in this case on November 7, 2001.

3. Effective September 17, 2001, the Commission issued its Order Adopting Procedural Schedule.

4. On September 26, 2001, the parties moved the Commission to cancel the procedural schedule and stay further proceedings in this matter beyond the 120-day deadline because of general issues raised by the United States Department of Agriculture ("USDA.") in regard to the territorial agreement.

5. Effective October 11, 2001, the Commission issued an Order Suspending Procedural Schedule and Directing Filing, in which the Commission suspended the approved procedural schedule but denied the parties' request to cancel the schedule, and required that the parties submit a proposed amended procedural schedule that complies with the 120-day deadline, or that the parties request an extension of the timeline that is supported by allegations of fact and law making out good cause as would support such an extension.

6. The Commission's order of October 11, 2001 pointed out that the parties did not sufficiently specify the potential issues that the USDA might have or raise with respect to the territorial agreement.

7. The USDA has yet to inform the parties of the specific nature of its concerns with the territorial agreement. Therefore, the parties cannot be more specific than they were in their original motion to cancel the procedural schedule regarding the specific issues that USDA has regarding the territorial agreement. The parties can, however, provide the Commission with the following additional background information regarding the USDA's interest in the territorial agreement which sheds light on the nature of the USDA's potential concerns.

8. The USDA, although not a party to this action, has an interest herein, because the District is indebted to the USDA in the original principle sum of \$740,000.00

9. The indebtedness originates from Junior Lien Waterworks Revenue bonds issued August 25, 1998, in the principal amount of \$240,000.00, and Junior Lien Waterworks Revenue bonds issued March 28, 2000, in the principal amount of \$500,000.00.

10. The USDA is the lender and/or guarantor of the amounts owed by the District on the above-referenced indebtedness.

11. Because of the USDA's position and interest with respect to the outstanding indebtedness, the Agreement contemplated by the parties requires USDA approval in addition to the approval mandated by the laws of the State of Missouri and which is sought in this action. The USDA's interest lies in the fact that the agreement may, in the future, affect revenues of the District, the source of security of the indebtedness to the USDA. Proceeding without USDA approval could implicate the default provisions of the notes evidencing the above indebtedness, which provide in relevant part as follows:

Section 2.3 The Association agrees not to sell, transfer, lease or otherwise encumber the system or any portion thereof or interest therein, nor permit others to do so, without the prior written consent of the Government [USDA].

Section 2.4 The Association agrees not to borrow any money from any source, enter into any contract or agreement, or incur any other liabilities in connection with making enlargements, improvements or extensions to, or for any other purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government [USDA] if such undertaking would involve the source of funds pledged to pay the loan(s).

Section 4.1 The association agrees that upon default in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government [USDA], at its option insofar as state law allows may (a) declare the entire principal amount then outstanding and accrued interest immediately due and

payable, and/or (b) for the account of the Association (payable from the source of funds pledged to pay the Bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default.

Section 4.2 Default under the provisions of this Agreement or any instrument incident to the making or insuring of the loan may be construed by the Government [USDA] to constitute a default under any other instrument held by the Government [USDA] and executed or assumed by the Association, and default under any such instrument may be construed by the Government [USDA] to constitute default hereunder.

12. District representatives and counsel for the District have met with local and regional representatives of the USDA. In the course of that meeting, USDA representatives informed the District and counsel for the District that the USDA had "concerns" with some of the provisions of the territorial agreement. Unfortunately, the USDA was not any more specific at that time. The USDA promised the District that the USDA's regional legal counsel would be sending "a letter" outlining the USDA's concerns in the near future.

13. The above-referenced meeting occurred after the City and the District filed their joint application for approval of the territorial agreement in this matter. However, it has been several weeks since the meeting took place and the USDA still has not notified the District and the City to inform them further about the USDA's concerns.

14. The parties are requesting a stay of these proceedings and a suspension of the procedural schedule in this matter because the concerns of the USDA might require the parties, to some extent, to renegotiate and revise certain terms set forth in the territorial agreement. The parties do not want to put themselves, the Commission, and their respective legal representatives to the unnecessary time and expense of

completing the hearing process on the agreement that has been filed with the Commission if, as the parties believe, some modifications will need to take place.

15. In addition, given the time constraints, the parties believe that it will be virtually impossible to comply with the 120-day requirement of Section 257.172.3 even if the USDA were to make its concerns known immediately, given the remaining time under the deadline. It is virtually impossible for the parties to submit a schedule for a list of issues or stipulation and agreement, direct testimony, position statements and witness lists, rebuttal testimony and an evidentiary hearing, to occur before November 7, 2001.

16. At the same time, the parties do not believe that it is sensible to continue under the existing deadline and recommend approval of the agreement without alleviating the concerns regarding the security interests of the USDA because the agreement may not be valid or may become moot depending on the USDA's position.

17. Further, the City and District also wish to avoid incurring the added time and expense involved if they must dismiss the case and refile it at the appropriate time.

18. Unfortunately, counsel has been unable to locate any cases under Section 247.172.3 which elaborate upon the "good cause" standard. The parties suggest that good cause does exist in this case because the parties do not want to put themselves, the Commission, and their respective legal representatives to the unnecessary time and expense of completing the hearing process on the agreement that has been filed with the Commission if, as the parties believe, some modifications will need to take place. It would also be virtually impossible for the parties to comply with the 120-day requirement of Section 257.172.3 even if the USDA were to make its concerns known immediately.

The parties also do not believe it is sensible to recommend approval of the agreement in its current form. Finally, the City and the District wish to avoid the added time and expense involved if they must dismiss the case and refile it at the appropriate time

19. All parties are in agreement with this request. The request, if granted, will cause no harm to the public interest and would save the parties the time and expense.

WHEREFORE, the parties jointly request that the Commission enter its order staying the proceedings and canceling the procedural schedule and specifically permitting the parties to exceed the 120-day deadline set forth in Mo. Rev. Stat. § 247.172.3 for the reasons stated above; that the parties be permitted to notify the Public Service Commission at such time as the USDA has informed the District of its concerns and the parties have had an opportunity to address them and make any necessary changes to the agreement and thereupon proceed upon the pending petition, upon such terms and conditions as the Commission deems just and proper in the premises.

Respectfully submitted,



JEFFREY H. BLAYLOCK #34151
FORD, PARSHALL & BAKER, L.L.C.
609 East Walnut Street
P.O. Box 1097
Columbia, MO 65205-1097
573-449-2613
573-875-8154 FAX
email: jblaylock@fpb-law.com
ATTORNEYS FOR CITY OF
HANNIBAL, MISSOURI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing pleading have been mailed or hand-delivered to all counsel of record as shown on the service list below this 18th day of October, 2001.

Victoria L. Lizito
P.O. Box 360
Jefferson City, MO 65102

Ruth O'Neill
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Rodney Rodenbaugh
P.O. Box 466
423 South Main Street
New London, MO 63459