

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3
4 HEARING

5 February 7, 2002
6 Jefferson City, Missouri
7 Volume 2
8

9 In the Matter of the Application)
10 of the City of Pacific, Missouri,)
11 and Public Water Supply District)
12 No. 3 of Franklin County,)
13 Missouri, for Approval of a)
14 Territorial Agreement Concerning)
15 Territory Encompassing Part of)
16 Franklin County, Missouri)

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21 BEFORE:

22 BILL HOPKINS, Presiding,
23 SENIOR REGULATORY LAW JUDGE.
24
25

26 REPORTED BY:

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1 APPEARANCES:

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FOR: City of Pacific, Missouri.
Public Water Supply District #3 of
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FOR: Staff of the Missouri Public Service
Commission.

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1 P R O C E E D I N G S

2 (Written Entries of Appearance filed.)

3 JUDGE HOPKINS: My name is Bill Hopkins, and
4 this is an evidentiary hearing on the joint
5 application for approval of a water service area
6 territorial agreement, Case No. WO-2002-226.

7 In the Unanimous Stipulation and Agreement
8 that was filed on February 1st, 2002, all of the
9 parties stated that the only witness to be called
10 would be a person appearing on behalf of Staff. Is
11 that still correct?

12 (No response.)

13 JUDGE HOPKINS: I don't see any
14 disagreement.

15 MS. O'NEILL: That's correct.

16 JUDGE HOPKINS: So I'll let Staff call the
17 first and only witness in this proceeding. Go ahead.

18 MS. KIZITO: I have three exhibits. I
19 haven't had those marked.

20 JUDGE HOPKINS: Okay. So you have exhibits
21 to be marked. Go ahead and mark them.

22 (EXHIBIT NOS. 1 THROUGH 3 WERE MARKED FOR
23 IDENTIFICATION.)

24 MS. KIZITO: We haven't entered our
25 appearances.

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1 JUDGE HOPKINS: I'm sorry? Go ahead.

2 MS. KIZITO: We haven't entered our
3 appearances for the record.

4 JUDGE HOPKINS: You're going to have to
5 speak into the microphone. I can't hear you up here.

6 MS. KIZITO: We haven't entered our
7 appearances for the record. Would you like us to do
8 that first?

9 JUDGE HOPKINS: Yes, you can do that. We've
10 already had written entries of appearance, but go
11 ahead. Go ahead.

12 MS. KIZITO: My name is Victoria Kizito.
13 I'm here on behalf of the Staff of the Missouri Public
14 Service Commission. Our address is P.O. Box 360,
15 Jefferson City, Missouri, 65102.

16 MS. O'NEILL: Good morning. Ruth O'Neill
17 appearing on behalf of the Office of Public Counsel
18 and the public, P.O. Box 7800, Jefferson City,
19 Missouri, 65102.

20 MR. MILLER: Charles Brent Stewart and John
21 Dowe Miller with the law firm of Stewart & Keevil,
22 LLC. Our address is 1001 Cherry Street, Suite 302,
23 Columbia, Missouri, 65201, representing the Joint
24 Applicants, City of Pacific, Missouri and Public Water
25 Supply District No. 3 of Franklin County.

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1 JUDGE HOPKINS: All right. Now, you've had
2 your exhibits marked, Ms. Kizito?

3 MS. KIZITO: Yes.

4 JUDGE HOPKINS: And you're ready to call
5 your witness?

6 MS. KIZITO: Yes, I am.

7 (Witness sworn.)

8 JUDGE HOPKINS: Thank you.

9 Please be seated.

10 Now, please state and spell your name for
11 the court reporter.

12 THE WITNESS: My name is Dale Johansen,
13 J-o-h-a-n-s-e-n.

14 JUDGE HOPKINS: Go ahead, Ms. Kizito.

15 DALE JOHANSEN testified as follows:

16 DIRECT EXAMINATION BY MS. KIZITO:

17 Q. For whom do you work and in what capacity?

18 A. I work for the Missouri Public Service
19 Commission, and my position is Manager of the Water
20 and Sewer Department in the Utility Operations
21 Division.

22 Q. And what is your address?

23 A. Post Office Box 360, Jefferson City,
24 Missouri, 65102.

25 Q. How long have you worked for the Commission?

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1 A. For a total of nearly nineteen-and-a-half
2 years, and I've been in my current position for a
3 little over six-and-a-half years.

4 Q. Have you previously testified in cases
5 before this Commission?

6 A. Yes, I have. I've testified in several
7 cases, including seven previous cases involving the
8 approval of territorial agreements.

9 Q. I'm now going to hand you what's previously
10 been marked as Exhibit No. 1.

11 Are you familiar with this document?

12 A. Yes, I am.

13 Q. And what is it?

14 A. This is the Joint Application for Approval
15 of a Written Water Service Territorial Agreement,
16 which was filed by Public Water Supply District No. 3
17 of Franklin County and the City of Pacific, Missouri,
18 and that was filed originally on November 9th, 2001.

19 Attached to the Joint Application as
20 appendix A is a copy of the Territorial Agreement
21 between the District and the City which was entered
22 into on June 19th, 2001. And also attached to the
23 Joint Application as appendix B is a listing of the
24 customers that will have their water supplier changed
25 as a result of the Agreement.

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1 And then also attached to the Agreement are
2 a legal description of the affected service areas and
3 three maps that depict those service areas. And
4 regarding these attachments, I would note that the
5 legal description is not specifically identified as an
6 exhibit, but the maps are identified as Exhibits A, B,
7 and C to the Agreement.

8 Q. In your capacity as Manager of the
9 Commission's Water and Sewer Department, have you had
10 an opportunity to review the Joint Application, the
11 Territorial Agreement, and the related attachments?

12 A. Yes, I have.

13 Q. Please briefly describe your review of these
14 documents.

15 A. First, I conducted an overall review of the
16 provisions of the Joint Application, the Territorial
17 Agreement, and the attachments to the Agreement.
18 Second, I compared the provisions of the Application,
19 the Agreement, and the attachments to the statutory
20 requirements that apply to water service territorial
21 agreements. And, third, I compared the provisions of
22 the Application to the requirements of the Commission
23 rules that pertain to applications for review and
24 approval of territorial agreements.

25 Q. Regarding the statutory requirements you

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1 just referenced, where are those found?

2 A. They are found in chapter 247, section 172
3 of the Revised Statutes of Missouri.

4 Q. Would you please summarize the applicable
5 statutory requirements as you understand them?

6 A. Certainly. First, the agreement must
7 specifically designate the boundaries of the water
8 service areas of each service provider subject to the
9 agreement. Second, the agreement must specify the
10 powers granted by the entities subject to the
11 agreement to operate within one another's corporate
12 boundaries. Third, the Commission's approval of a
13 territorial agreement shall in no way affect or
14 diminish the rights and duties of any water service
15 supplier that is not a party to the agreement to
16 provide service within the boundaries designated in
17 the agreement. And, fourth, Commission approval of a
18 territorial agreement may come only after an
19 evidentiary hearing is held and after the Commission
20 determines that approval of the agreement is not
21 detrimental to the public interest.

22 Q. Regarding the Commission rules that you
23 previously mentioned, where are those found?

24 A. Those are found in 4 CSR 240-2.060 and
25 4 CSR 240-51.010.

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1 Q. And what are the subjects of these rules?

2 A. Section 1 of 4 CSR 240-2.060 contains the
3 general requirements that all applications filed with
4 the Commission must meet, while section 13 of that
5 rule contains the specific requirements that
6 applications for Commission review and approval of
7 territorial agreements must meet.

8 4 CSR 240-51.010 contains the requirements
9 regarding the schedule of fees applicable to
10 applications for Commission review and approval of
11 water service territorial agreements.

12 Q. Regarding the statutory requirements that
13 you previously mentioned, is it your opinion that the
14 Joint Application and the Territorial Agreement
15 satisfy those requirements?

16 A. Based on my review of the Application, the
17 Agreement, and the attachments to the Agreement, it is
18 my opinion that the statutory requirements have been
19 satisfied for the following reasons: First, the legal
20 description and exhibits A, B, and C attached to the
21 Agreement designate the boundaries of the water
22 service areas of the District and the City; second,
23 the Agreement clearly sets out the powers that each
24 party to the Agreement grants to the other to operate
25 in their respective corporate boundaries; third, the

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1 Joint Application contains a provision acknowledging
2 that the Agreement in no way affects or diminishes the
3 rights of any water service provider that is not a
4 party to the Agreement to provide service within the
5 boundaries designated in the Agreement; and, fourth,
6 as a result of these three items and additional items
7 I will cover later in this testimony, it is my opinion
8 that Commission approval of the Agreement would not be
9 detrimental to the public interest.

10 Q. Regarding the Commission rules that you
11 previously mentioned, is it your opinion that the
12 requirements found in those rules have been met in
13 this instance?

14 A. Based on my review of the Joint Application
15 and the fact that the Joint Applicants tendered the
16 necessary filing fee at the time they filed the
17 Application, it is my opinion that the requirements
18 have been met to date.

19 Q. Will any existing customers of either the
20 District or the City experience a change in their
21 water service provider as a result of the Agreement?

22 A. Yes, they will. As is noted in the Joint
23 Application, 49 customers will have their water
24 service supplier changed as a result of the Agreement.
25 Also, as is noted in paragraphs 5 and 6 of the

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1 Stipulation and Agreement that the parties filed in
2 this case on February 1, these customers are all
3 currently served by the District, and the District
4 sent notice of the Territorial Agreement to those
5 customers on January 4th. And as I mentioned earlier,
6 a listing of the affected customers was attached to
7 the Joint Application as appendix B.

8 Q. Will the customers that will be affected by
9 implementation of the Territorial Agreement experience
10 a change in their water service rates?

11 A. Yes, they will. However, as is stated in
12 the notice that the District sent to the affected
13 customers which was attached to the Stipulation and
14 Agreement as schedule 1, these customers will see a
15 reduction in their water service rates as a result of
16 the Agreement.

17 Q. Are you aware of any customer inquiries or
18 complaints that have been received regarding the Joint
19 Application or the Territorial Agreement?

20 A. To my knowledge, the Staff has not received
21 any contacts of any kind regarding the Joint
22 Application or the Territorial Agreement, and I base
23 this upon responses to an inquiry that I made of my
24 staff and the staff of the Commission's Public
25 Information and Education Department regarding

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1 customer calls or other contacts they may have
2 received about the case. Also, had such calls or
3 contacts been received by other members of the Staff,
4 I'm sure I would have been made aware of those.

5 Additionally, Ms. O'Neill of the Office of
6 the Public Counsel has informed me that her office
7 received two telephone calls in response to the
8 District's customer notice and that the comments made
9 during those calls were in support of the Agreement.

10 Q. Is there anything else you think the
11 Commission should consider in reaching its decision on
12 whether to approve the Joint Application and the
13 Territorial Agreement?

14 A. Yes. There are five additional items
15 pertaining to the Agreement to which I believe the
16 Commission should give positive consideration. First,
17 implementation of the Agreement will enable the
18 parties to avoid wasteful and costly duplication of
19 facilities and services in the areas that are the
20 subject of the Agreement. Second, implementation of
21 the Agreement will preclude any destructive
22 competition that might otherwise arise between the
23 parties to the Agreement in the subject service areas.
24 Third, implementation of the Agreement will improve
25 the ability of the parties to the Agreement to plan

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1 for future water service and will enable prospective
2 customers to know who will provide their service.
3 Fourth, implementation of the Agreement will establish
4 a method for the parties to amend their service
5 territories in the future. And, fifth, I would ask
6 the Commission to note that it is my opinion that both
7 parties to the Agreement have the ability to provide
8 adequate service to the customers in the agreed-upon
9 service areas and that they both have adequate system
10 capacity to provide service currently and into the
11 foreseeable future.

12 Q. Okay. I'm now going to hand you what's been
13 marked as Exhibit No. 2.

14 Are you familiar with that document?

15 A. Yes, I am.

16 Q. And what is it?

17 A. This is the Unanimous Stipulation and
18 Agreement that the District, the City, the Commission
19 Staff, and the Office of Public Counsel filed in this
20 case on February 1, 2002.

21 Q. Are you familiar with the terms of the
22 Stipulation and Agreement?

23 A. Yes, I am.

24 Q. Did you participate in the development of
25 the Stipulation and Agreement?

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1 A. Yes, I did.

2 Q. And do you recommend that the Commission

3 approve this Agreement?

4 A. Yes, I do.

5 Q. I'm now going to hand you what's previously

6 been marked as Exhibit No. 3.

7 Are you familiar with that?

8 A. Yes.

9 Q. Can you identify that for us?

10 A. This is a Waiver of Condition that the

11 District and City filed in this case on January 31st

12 of this year.

13 Q. And what does the Waiver of Condition do?

14 A. The Waiver of Condition modifies the

15 provisions of paragraph 8 of the Territorial Agreement

16 pertaining to the date by which the Commission must

17 act on the Agreement for it to remain effective.

18 Specifically, it changes that date from June 1st,

19 2002 -- I'm sorry -- June 1st, 2001 to March 31st,

20 2002.

21 Q. Do you have anything further to add?

22 A. No, I do not.

23 Q. Does that conclude your testimony?

24 A. Yes, it does.

25 MS. KIZITO: Your Honor, I would like to

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1 offer Exhibits 1, 2, and 3 for acceptance into the
2 record, and I also tender the witness for
3 cross-examination.

4 JUDGE HOPKINS: Any objections to these
5 exhibits being entered into evidence?

6 MS. O'NEILL: No.

7 JUDGE HOPKINS: Hearing no objection, I will
8 enter them into evidence.

9 (EXHIBIT NOS. 1 THROUGH 3 WERE RECEIVED INTO
10 EVIDENCE.)

11 JUDGE HOPKINS: And, Mr. Miller or
12 Mr. Stewart, do you have any cross-examination
13 questions?

14 MR. MILLER: No questions.

15 JUDGE HOPKINS: Ms. O'Neill?

16 MS. O'NEILL: No questions, your Honor.

17 JUDGE HOPKINS: Thank you.

18 I have a couple of questions, Mr. Johansen,
19 and some of this will be repetitive to what you've
20 already said, and I apologize for that. I just need
21 to clear up a couple little technical things.

22 QUESTIONS BY JUDGE HOPKINS:

23 Q. The District here, it's principal place of
24 business is located at Villa Ridge; is that correct?

25 A. I believe so. Let me double check.

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1 Yes, that's correct.

2 Q. And the City, of course, is located in
3 Pacific?

4 A. Correct.

5 Q. This Territorial Agreement, does that
6 designate the boundaries of the water service area for
7 each of these applicants, for the District and for the
8 City?

9 A. Yes, it does.

10 Q. Are any of these service areas overlapping?

11 A. They were previously, and that's basically
12 the reason for the Agreement. It designates in those
13 areas where they currently overlap who is going to
14 serve the customers, and it also designates on a
15 going-forward basis for those overlapping areas which
16 of the providers is going to provide the service.

17 Q. So will there be some overlap after this
18 Agreement goes into effect?

19 A. Technically, there still -- there is still
20 an overlap of the -- of the -- for example, of the
21 corporate boundaries of the City and the boundaries of
22 the District, but what this Agreement does is, in
23 those areas where there is an overlap, it designates
24 who is going to provide the service on a going-forward
25 basis.

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1 Q. All right. And I noticed in the Agreement
2 that if there is a landowner that has the line running
3 through the property, then the landowner can choose
4 which provider that he wants; is that correct?

5 A. Yes. That's my understanding.

6 Q. But you're saying there is no overlap unless
7 it's a technical overlap. In other words, there is an
8 agreement that would cover any overlap; is that
9 correct?

10 A. That's my understanding, yes.

11 Q. I'm not trying to put words in your mouth.

12 A. Right.

13 Q. I just want to understand.

14 Okay. And this Territorial Agreement sets
15 forth the powers granted to the District by the City
16 to operate within the corporate boundaries of the
17 City; is that correct?

18 A. Yes.

19 Q. And it also sets forth the powers granted to
20 the City to operate within the boundaries of the
21 District?

22 A. That's correct.

23 Q. And you talked about the future. This
24 Agreement sets out for future purposes where the
25 extensions are required or how those extensions are

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1 going to be made and provides for each party to
2 connect to existing facilities of the other one and to
3 purchase water under certain circumstances to serve
4 new customers rather than installing new facilities;
5 is that true?

6 A. Yes.

7 Q. All right. And it's your expert opinion
8 that the customers being transferred to the City will
9 be served well by the City?

10 A. Yes. I believe both providers here are --
11 you know, have adequate -- they both have the ability
12 to provide good service. They both provide good
13 service now. And they also either have the capacity
14 necessary to do that or the provisions for
15 interconnections and the purchase of wholesale water
16 takes care of those things.

17 Q. Okay. So you just said that the City was a
18 reliable service provider and their existing
19 facilities -- the City's existing facilities are
20 adequate; is that true?

21 A. Yes.

22 Q. And the extension arrangements that are in
23 the Territorial Agreement for the purchase and sale of
24 water back and forth to one another, this avoids
25 duplication; is that true?

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1 A. That's correct.

2 Q. And I'm not sure if you testified to this,
3 so let me ask you: Will these customers being
4 switched experience a rate decrease or increase?

5 A. They will actually experience a decrease in
6 rates.

7 Q. Okay. And it's your expert opinion that the
8 Territorial -- Territorial Agreement is not
9 detrimental to the public interest?

10 A. That's correct.

11 Q. Do you think this Territorial Agreement will
12 avoid future duplication of services and undue cost to
13 customers?

14 A. Yes.

15 Q. And do you feel that the Joint Applicants
16 are each capable of adequately and safely providing
17 the water supply service and maintenance needs of the
18 customers in their service areas as designated in the
19 proposed Territorial Agreement?

20 A. Yes.

21 Q. And so the overall effect of the proposed
22 Territorial Agreement would not be harmful to
23 ratepayers. True or false?

24 A. True.

25 Q. And that the Territorial Agreement would

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1 promote efficiency and safety. True or false?

2 A. True.

3 Q. And that the Territorial Agreement would
4 reduce customer dissatisfaction?

5 A. True.

6 JUDGE HOPKINS: Thank you very much.

7 Is there any redirect or cross on -- based
8 on my questions?

9 MR. MILLER: No, your Honor.

10 MS. O'NEILL: No, your Honor.

11 JUDGE HOPKINS: Or redirect or cross -- or
12 recross, whatever.

13 Thank you, Mr. Johansen.

14 You're excused.

15 (Witness excused.)

16 JUDGE HOPKINS: Anything else from any other
17 party?

18 (No response.)

19 JUDGE HOPKINS: Thank you very much.

20 This hearing is concluded.

21 WHEREUPON, the hearing of this case was
22 concluded.

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1 I N D E X

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3 STAFF'S EVIDENCE:

4 DALE JOHANSEN:

5 Direct Examination by Ms. Kizito 12

6 Questions by Judge Hopkins 22

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E X H I B I T S I N D E X

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Marked Received

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16 Exhibit No. 1 10 22
17 Joint Application for Approval
18 of a Written Water Service
19 Territorial Agreement

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21 Exhibit No. 2 10 22
22 Unanimous Stipulation and Agreement
23 filed February 1, 2002

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25 Exhibit No. 3 10 22
Waiver of Condition

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