

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

3 -----

4

5

6

7 TRANSCRIPT OF PROCEEDINGS

8 Oral Argument

9 February 16, 1999  
10 Jefferson City, Missouri  
Volume 2

11

12 -----

13 In the Matter of Missouri-American )  
Water Company for Permission, Approval,) )  
14 and a Certificate of Convenience and )  
Necessity Authorizing it to Construct, ) Case No.  
15 Install, Own, Operate, Control, Manage ) WA-97-45  
and Maintain a Water System for the ) )  
16 Public in Certain Areas in St. Charles )  
County, Missouri. )

17 In The Matter of Missouri-American )  
18 Water Company's Revised Tariff Filing ) Case No.  
Concerning Service Connections. ) WT-97-492

19 Public Water Supply District No. 2 of )  
20 St. Charles County, Missouri, )  
)

21 Complainant, )  
) Case No.  
22 Vs. ) WC-96-441  
)

23 Missouri-American Water Company, )  
)  
24 Respondent. )

25 -----

1                   LEWIS R. MILLS, JR, Presiding,  
                    DEPUTY CHIEF REGULATORY LAW JUDGE.  
2                   SHEILA LUMPE, Chairperson,  
                    M. DIANNE DRAINER,  
3                   CONNIE MURRAY,  
                    ROBERT G. SCHEMENAUER,  
4                                 COMMISSIONERS.

5                                 -----

6  
7                   REPORTED BY:  
8                   MELINDA ADOLPHSON, CSR  
                    ASSOCIATED COURT REPORTERS, INC.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 APPEARANCES:  
2 W. R. ENGLAND, Attorney at Law  
3 Brydon, Swearengen & England, P.C.  
4 P.O. Box 456  
5 312 East Capitol Avenue  
6 Jefferson City, Missouri 65102-0456  
7  
8 FOR: Missouri-American Water Company.  
9  
10  
11 CHARLES BRENT STEWART, Attorney at Law  
12 Stewart & Keevil, L.L.C.  
13 1001 Cherry Street, Suite 302  
14 Columbia, Missouri 65201  
15  
16 FOR: Public Water Supply District No. 2  
17 of St. Charles County.  
18  
19  
20 JOHN COFFMAN, Senior Public Counsel  
21 P.O. Box 7800  
22 Jefferson City, Missouri 65102  
23  
24 FOR: Office of the Public Counsel and  
25 the Public.  
26  
27 KEITH R. KRUEGER, Assistant General Counsel  
28 P.O. Box 360  
29 Jefferson City, Missouri 65102  
30  
31 FOR: Staff of the Missouri Public  
32 Service Commission.  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

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

2 JUDGE MILLS: We're on the record in the  
3 matter of Missouri-American Water Company for  
4 permission, approval, and a certificate of  
5 convenience and necessity authorizing it to  
6 construct, install, own, operate, control, manage  
7 and maintain a water system for the public in  
8 certain areas in St. Charles County, Missouri,  
9 which is assigned Case No. WA-97-45 along with  
10 consolidated cases.

11 We're here this afternoon for oral  
12 arguments at Missouri-American's motion on the  
13 question of exactly what surveys need to be done  
14 and what further tasks Missouri-American has to  
15 perform.

16 I don't know what the position of the  
17 parties is on Missouri-American's request, but  
18 let's go around the room, and we'll do entries of  
19 appearance and then we'll see where that gets us.

20 MR. ENGLAND: Okay. Let the record  
21 reflect the appearance of W. R. England the Third  
22 and Dean L. Cooper appearing on behalf of  
23 Missouri-American Water Company. Our address is  
24 Brydon, Swearngen, England, P.C., Post Office  
25 Box 456, Jefferson City, Missouri 65102.

ASSOCIATED COURT REPORTERS, INC.  
(573) 636-7551 JEFFERSON CITY, MO 65109  
(573)442-3600 COLUMBIA, MO 65201

1                   MR. KRUEGER: Keith R. Krueger for the  
2   Staff of the Missouri Public Service Commission.  
3   My address is P.O. Box 360, Jefferson City,  
4   Missouri 65101.

5                   MR. COFFMAN: John B. Coffman for the  
6   Office of the Public Counsel, P.O. Box 7800,  
7   Jefferson City, Missouri 65102.

8                   MR. STEWART: Charles Brent Stewart of the  
9   law firm of Stewart and Keevil, L.L.C., 1001 Cherry  
10   Street, Suite 302, Columbia, Missouri 65201,  
11   appearing on behalf of Public Water Supply District  
12   No. 2 of St. Charles County.

13                  JUDGE MILLS: Why don't we approach it  
14   this way: Why don't the Company present their  
15   argument, then if we find that there are any  
16   parties in agreement with your position, they can  
17   go next, and then the parties that are opposed can  
18   finish up. To the extent it's necessary, you can  
19   have a brief period of rebuttal at the end.

20                  MR. ENGLAND: That sounds fair enough.  
21   Before we get started, I saw that my partner this  
22   morning had a handout for you. So not to be  
23   outdone, we raced around over the lunch hour and  
24   put together a handout for purposes of this  
25   presentation. So if I may, I want to distribute

1 copies.

2 JUDGE MILLS: I hope it's bound as nicely  
3 as his was.

4 MR. ENGLAND: No, unfortunately they're  
5 not. But we didn't observe margins, so if we had  
6 bound them, I'm not sure you could have read  
7 everything on the left-hand side of the page.

8 And I'm not sure it is necessary this be  
9 made an exhibit. It's just more for illustrative  
10 purposes.

11 JUDGE MILLS: We'll go ahead and mark it  
12 with an exhibit number, and you can decide whether  
13 or not to offer it at the end. But it's certainly  
14 easier to refer to in the record if it has an  
15 exhibit number.

16 (EXHIBIT NO. 1 WAS MARKED FOR  
17 IDENTIFICATION.)

18 JUDGE MILLS: Whenever you're ready.

19 MR. ENGLAND: Thank you. May it please  
20 the Commission. I'm not sure that oral argument is  
21 a proper description. At least I hope not. I hope  
22 there won't be much arguing. Our request, I think  
23 was more for clarification and guidance. And  
24 again, unlike my partner who made his presentation  
25 to you this morning, I'm not sure I have a firm

1 position or a strenuous recommendation to make to  
2 you-all. I think we've got a preference, but quite  
3 honestly we're willing to do whatever you-all think  
4 is appropriate and want us to do in this matter.

5 Just a little bit of background, as you  
6 recall, oh, guess it was last year or more than a  
7 year ago, we were involved with three separate  
8 cases that actually would consolidate involving our  
9 certificated area in the St. Charles County area.  
10 One was a request to expand our certificated area,  
11 another case was a complaint by water district who  
12 had overlapping territories with us, and a third  
13 was to make -- I think seek a waiver from certain  
14 requirements of our connection rule on file in our  
15 tariff in order to better compete with the water  
16 district. At least that was our position at that  
17 time.

18 As a result of the case, the complaint  
19 case, the certificate case, the service connections  
20 were all dealt with and taken care of by your  
21 decision. But there was a requirement in the case,  
22 and I'd like to read it to you because this is what  
23 we've been trying to do, what we've been trying to  
24 follow and what causes a little bit of our dilemma  
25 or concern maybe at this point in time.

1           On page 10 of the original report and  
2   order, and I'm kind of in the middle of the last  
3   paragraph down at the bottom, it says, MAWC with  
4   the assistance of Staff and OPC shall examine  
5   MAWC's current tariff with the purpose of comparing  
6   it with MAWC's service territory in the State of  
7   Missouri. MAWC will then make an on-the-ground  
8   inspection of all areas in which it serves in the  
9   State of Missouri to determine with certainty that  
10   it does not -- excuse me -- that it is not  
11   operating outside its service area in any location,  
12   and that it is in full and exact compliance with  
13   its authorized certificates of convenience and  
14   necessity.

15           MAWC will also file maps and metes and  
16   bounds descriptions of all authorized service  
17   territory in the State to ensure that a full,  
18   complete and accurate set is currently on record  
19   with the Commission.

20           And I guess later in the ordered  
21   paragraphs, it was ordered paragraph 3, it states  
22   that Missouri-American Water Company is hereby  
23   instructed to carry out and complete the above  
24   described survey of its service territory and  
25   examine its tariffs currently on file to ensure the



1 territories described in the tariffs are consistent  
2 with its certificated area.

3 I believe there was some other  
4 requirements regarding the timing of that filing,  
5 and we have subsequently filed, I believe two  
6 applications for extension of time. I think the  
7 first -- or the requirement rather initially  
8 required us to complete this in 60 days.

9 Again, by way of background, I'd like to  
10 tell you a little bit about what we've done so far  
11 to comply with that order. The order asked us to  
12 examine our certificated area as recited in our  
13 tariffs. Typically a utility will have in its  
14 tariff a statement of its certificated area, and  
15 typically not always, by no means always, that  
16 certificated area will be expressed on a one page  
17 or more pages in their tariff in the terms of a  
18 metes and bounds legal description. And I'll talk  
19 a little bit about metes and bounds legal  
20 description later.

21 In addition there will be a map of the  
22 service area. Now, in the telecommunications side,  
23 there are no metes and bounds descriptions. There  
24 are exchange boundary maps. And back in 1987 when  
25 House Bill 360 became law, of all the incumbent

1 local exchange carriers came in and applied for and  
2 received a restatement of their certificate,  
3 because we found when we went back to research our  
4 certificates for telephone companies, they weren't  
5 very well stated. There were no metes and bounds  
6 descriptions. And in many instances they simply  
7 recited the fact that XYZ telephone company was  
8 authorized to provide service in the community of  
9 West Plains and the surrounding area.

10 So we took the opportunity back in 1987 to  
11 get a restatement of our certificate for all of the  
12 telephone companies and made those certificates  
13 code terminus, if you will, with exchange boundary  
14 maps, which you-all approved in tariff filings.  
15 And because those exchange boundaries change from  
16 time to time, the language in that tariff -- excuse  
17 me -- in that order stated that you would have a  
18 certificate to provide service, local service at  
19 least, within those exchange boundaries as defined  
20 by your maps on file with and approved by the  
21 Commission, plus any changes that may be made to  
22 them in the future.

23 So on the telephone side you have a rather  
24 dynamic, at least as far as area certificates are  
25 concerned, a dynamic certificate can change from

1 time to time based upon your approval of  
2 subsequently filed exchange boundary maps. In the  
3 electric, gas, water and sewer side, you're going  
4 to find a combination of metes and bounds  
5 descriptions, and more loosely described areas such  
6 as we did in the telephone side. For example, the  
7 authority to serve the City of St. Joseph and  
8 vicinity, or the authority to serve the City of  
9 Warrensburg and adjacent areas.

10 When we went and looked at the tariffs for  
11 Missouri-American Water Company, I think we found  
12 three of the seven districts for which we had a  
13 metes and bounds description, and either two or  
14 three of those areas we had maps as well. What we  
15 found were that in the majority at least in four of  
16 the districts in St. Joseph, which is kind of a  
17 hybrid, the description was this loosely described  
18 language that I've been reciting to you.

19 And I'd like to digress a little bit and  
20 explain to you how we went back and determined what  
21 our certificated area was, because just because  
22 it's in your tariff, that's not the original ground  
23 of your certificate. The tariff is supposed to  
24 accurately reflect what your original report and  
25 order granting a certificate says. And everybody

1 tries to be accurate, but over time particularly in  
2 lengthy legal descriptions sometimes you may have a  
3 typographical error, a line may be dropped or a  
4 tariff sheet may be lost, but generally speaking  
5 your tariff is not the source of your certificate.  
6 It attempts to be an accurate recitation of your  
7 certificate but it's not the source.

8           So we had to go back and review the  
9 Commission's records back to whatever case it might  
10 have been that granted the company, or in this case  
11 its predecessor company has a certificate. And  
12 without boring you too much, in order to do that,  
13 if you've done any kind of research in your-alls  
14 files, it's kind of like the old Dewey decimal  
15 system at the library where you have to go through  
16 three by five index cards, and we start with  
17 Missouri-American Water Company, and when we go  
18 back so far, for example, 1993, we find out that  
19 Missouri-American Water Company acquired the  
20 properties of Missouri Cities Water Company. So  
21 there will be no more history on those territories  
22 that Missouri Cities served under  
23 Missouri-American.

24           Then you've got to go to the card catalog  
25 under Missouri Cities and work your way back. And

1     then what you will find is Missouri Cities acquired  
2     bits and pieces of districts here and there from  
3     other predecessor companies who may have acquired  
4     them from other predecessor companies, and it  
5     becomes a very, as you can imagine, tedious and  
6     time consuming and not 100 percent accurate  
7     process. Because what I found over the years is  
8     that sometimes believe it or not these three by  
9     five cards get filed out of place, or the statement  
10    of the type of case on the three by five card may  
11    not be entirely accurate.

12               What I was looking for, of course, were  
13    Commission cases where the company had come in to  
14    ask for certificate of convenience and necessity.  
15    And I would say that 99 or 98 percent of the time  
16    the statement of the case, the caption of the case  
17    is going to be an accurate description of what it  
18    is the Commission was dealing with in that case,  
19    but I can't guarantee 100 percent that that's the  
20    case.

21               Anyway, to try to shorten this up, I went  
22    through personally and reviewed your-all's records  
23    on these. And roughly \$11,000 later in legal fees  
24    I think I've figured it out. They were also some  
25    copying costs as you can imagine, and once we got

1 the copies of all the orders, of course, we had to  
2 read them all to understand what was going on, what  
3 things happened. It's a great -- actually not a  
4 great -- but it's somewhat interesting to see the  
5 development of utilities, who had them before the  
6 current company or before the company before the  
7 current company. So it's not a completely tedious  
8 and boring job, but there is some at least interest  
9 in seeing who had them and what way back when.

10 As I told you as a result of all of that,  
11 we were able to determine -- and I'm just going to  
12 take on the handout, I'm just going to kind of go  
13 around the map. The top sheet -- the top sheet is  
14 what I call a rough and dirty summary of what we  
15 found for each of the seven districts where we  
16 provide water. And I'll start at the top left-hand  
17 corner with St. Joseph.

18 And what we have there is -- behind this  
19 are each of the districts and a summary of the  
20 cases, some of the cases that I reviewed. I  
21 reviewed a lot more but these are the more rough.  
22 These are the relevant ones that I think lead up to  
23 the certificate.

24 What we found, for example, in the City of  
25 St. Joseph was because the St. Joseph water

1 company, the predecessor company was providing  
2 service in St. Jo before enactment of Public  
3 Service Commission Act back in 1917 or '18, I get  
4 those dates confused, it did not get a  
5 certificate. It was grandfathered. So the only  
6 thing we could find for St. Joseph was a case  
7 involving -- not the only thing, but the only thing  
8 that came close to the certificate was a case  
9 involving the acquisition of the St. Joseph water  
10 company by Missouri-American Water Company --  
11 excuse me -- couldn't even find that.

12 The summary on the St. Joseph district is  
13 back about six blue tabs, and it was a merger case  
14 involving St. Joseph Water Company merging with  
15 Missouri-American Water Company with  
16 Missouri-American Water Company being the surviving  
17 corporation. So there is no grant by this  
18 Commission of any certificate to the St. Joseph  
19 area, but as I said, that's because they were  
20 grandfathered. They existed before the Public  
21 Service Commission law.

22 What we find in the tariff is a  
23 description up in the right-hand corner that  
24 says -- the form says, Certificated Area and it  
25 will say St. Joseph and vicinity, so that's what

1 I've got here on the first page. Plus several  
2 years ago this company acquired the public water  
3 supply district No. 2 of Buchanan County. And at  
4 that time we had a metes and bounds description of  
5 that water district, so we have additional area in  
6 the St. Joseph area that is described by metes and  
7 bounds.

8 And then finally as you-all may recall,  
9 some of you may recall, we acquired a lime  
10 certificate and an area certificate for the new  
11 well field and the raw water lines that come from  
12 the well field that are north of the city limits in  
13 Andrew County and outside what we believe to be our  
14 existing certificated area. So in St. Joseph we've  
15 got a hodge-podge of certificates, if you will.  
16 The authority to serve St. Joseph and vicinity, the  
17 authority to serve the former water district which  
18 is defined by metes and bounds and the authority to  
19 maintain a well field as well as a raw water line  
20 north of town.

21 In Brunswick the best we can come up with  
22 is in and about Brunswick description. We have  
23 authority to serve in and about Brunswick,  
24 Missouri. In Mexico generally speaking it's in  
25 Mexico, Missouri. St. Charles is one of the few



1 districts where we have a complete legal  
2 description of the area that we serve. And this  
3 legal description is expressed, I believe in three  
4 different pieces. There is the large piece -- and  
5 let me use -- I brought the map from this case that  
6 we used earlier. Unfortunately I don't recall if  
7 we made it an exhibit, and if we did, what number  
8 it was, but I hope Mr. Stewart will remember it  
9 from our hearing.

10 This is a map of part of the St. Charles  
11 certificated area that we used in the complaint  
12 case and certificate case involving the water  
13 district. But we have one legal description which  
14 involves what I call the large area in  
15 St. Charles. We acquired three additional areas as  
16 a result of this case, so we have three subsequent  
17 legal descriptions for those three areas. One of  
18 which is shown here, and it's not all of the  
19 square, it's just part of it.

20 We have a raw water line that you-all  
21 certificated a couple of years ago so that we can  
22 get our extra or additional source of supply from  
23 the City of St. Louis that runs from the other side  
24 of Missouri River in St. Louis County across the  
25 river and into our certificated area. But the

1 bottom line is we do have metes and bounds  
2 description of all of our certificated area in  
3 St. Charles.

4 In Warrensburg we have authority to serve  
5 Warrensburg and the adjacent areas, plus I found a  
6 metes and bounds description of an additional area,  
7 and it's not contained in our tariffs. It was  
8 contained in a grant of authority several years ago  
9 back when Missouri Cities, I believe owned this  
10 company, but I don't believe it's a significant  
11 piece of area not in comparison to the Warrensburg  
12 area.

13 In Joplin again, there is another example  
14 of a company that existed prior to the Missouri  
15 Commission Law, and what we have there is at least  
16 expressed in our -- expressed in the tariffs and  
17 expressed in an order early on issued by the  
18 Commission back, I think in the -- maybe it was the  
19 late teens, early '20s, an acknowledgment that we  
20 had franchised from the City of St. Jo, and the  
21 Commission just sort of acknowledged that. So we  
22 have authority to serve the City of St. -- excuse  
23 me -- the City of Joplin and vicinity.

24 I believe it's the -- after the first blue  
25 tab, and it will give you some of the history that

1     went on in St. Joseph. The order that I'm  
2     referring to appears to have been issued in March  
3     of 1924 approving Joplin franchise granted earlier  
4     in 1923.

5             We also acquired some area in Joplin.  
6     Again, not large by comparison to the City of  
7     Joplin. Some additional little areas over time  
8     that are identified by metes and bounds  
9     description.

10            Finally in Platte County we have a  
11     complete metes and bounds description of our  
12     certificated area.

13            Now, I mentioned to you I wanted to  
14     discuss about metes and bounds, and I needed some  
15     help from my partner, Mr. Cooper, on this because  
16     he does more property law than I do, but -- and  
17     it's been a long time since I went to law school.  
18     But a metes and bounds is a very precise  
19     definition, legal definition of property. It's not  
20     the only legal definition but it is one. It's a  
21     very common one. A very accepted one, very  
22     precise. And that is what this Commission has had  
23     in its rules for as long as I can remember. Those  
24     rules were codified, I believe in 1975, and any  
25     applicant for certificated area must file with the

1 Commission, among other things, a map and a legal  
2 description, metes and bounds description of the  
3 area proposed to certificate.

4           Before Mr. Ciottone left this morning, I  
5 asked him if he could recall, because he worked at  
6 the Commission before I did, when the actual rule  
7 regarding applications and in particular the metes  
8 and bounds were implemented, and they predated his  
9 tenure with the Commission, so my guess is that  
10 sometime in the early to mid '60s, Commission  
11 issued a general order and first enacted the  
12 requirement that companies submit a metes and  
13 bounds description. And everybody, I think is  
14 uniformly or attempted to comply with that since  
15 that, but what you have, as I've mentioned  
16 previously, are a lot of companies or a lot of  
17 utilities that obtain their certificate prior to  
18 that time and may not have had a metes and bounds  
19 description of their proposed certificated area.

20           The -- I don't know if you call them  
21 detriments or down side to a metes and bounds  
22 description is that you tend to have to have a  
23 surveyor do it for you. It's not something a lay  
24 person can do. We're taught in law school how to  
25 read metes and bounds description, but even in one

1 of the legal manuals it says this is something a  
2 lawyer shouldn't do. You should rely on a surveyor  
3 to do it for you. So it involves -- I mean, it's  
4 very precise, but it involves the exercise of a  
5 land surveyor.

6 And I guess the other point I'd like to  
7 make about metes and bounds description is it's not  
8 always helpful in identifying on the ground where  
9 the line is, at least not without that surveyor to  
10 tell you where that line is. And again, let me  
11 take you back to the St. Charles area as an  
12 example. We have a horizontal line evidencing our  
13 certificated area described in metes and bounds  
14 that cuts across Highway N and cuts across some  
15 undeveloped property that's sort of a brown or a  
16 beige across -- not across hatch -- but a diagonal  
17 line. That is just a plain field right now. It's  
18 undeveloped. And without getting a surveyor out  
19 there to show us where that line is, if we sent a  
20 service man out there to determine where he could  
21 lay a line or a meter or what have you, he wouldn't  
22 know.

23 So metes and bounds are very precise.  
24 They can tell you where your property lines are.  
25 But without the surveyor out in the field to tell

1     you where that line is in many instances, you don't  
2     know where it is on a day-to-day basis. So that's  
3     another problem with metes and bounds as opposed to  
4     another type of legal description which might be a  
5     river, a street, county road or other natural  
6     monument that defines areas and is readily  
7     recognizable to somebody out in the field.

8             What we -- by the way, all along we've  
9     been keeping as you directed Public Counsel and  
10    Staff apprised of our progress, and they can speak  
11    for themselves, but I think they are well aware of  
12    what we've been doing and hopefully supportive of  
13    at least our request for some clarification.

14            Once we identified what we thought were  
15    certificated areas, I believe we came in and  
16    visited briefly with Public Counsel and Staff to  
17    tell them what we had found. And then we decided  
18    at least for those what I'll call big areas where  
19    we have a metes and bounds description, that's that  
20    water district south of St. Joseph, St. Charles and  
21    Platte County, we decided to let bids to surveyors  
22    to give us a bid or request a proposal from them as  
23    to what it would cost to help us identify, not only  
24    put that metes and bounds on a map, but put that  
25    metes and bounds on the ground so that we know

1     where it is.

2             And I've got to refer back to one of our  
3     pleadings where we summarized it. And I can't tell  
4     you because it's highly confidential, but it was  
5     contained in our Motion for Clarification the most  
6     recent filing on December 11th, 1998 on page 3.

7     And as you can see it involves substantial sums of  
8     money several 100,000s of dollars, and that's  
9     because we've got a lot of area in just these three  
10    places.

11            In an earlier pleading we determined that  
12    the legal description encompasses roughly 52.9  
13    miles in Platte County, 46.3 miles in St. Charles  
14    and 57 miles in St. Joseph, so we're covering a lot  
15    of territory with those legal descriptions. And in  
16    some instances we've even determined that we don't  
17    necessarily need a legal description -- or excuse  
18    me -- we don't necessarily need the survey to tell  
19    us where it is on the ground. Again, in  
20    St. Charles, part of the southwest boundary line is  
21    Highway 40-61. We know where that is. That's not  
22    a problem. But coming back this way and coming  
23    through that field that's where we need help. And  
24    we understand that before they can come back that  
25    way, they've got to locate pins at the end of

1 Highway 40-61 where we are as well as down here  
2 where we take off from Highway 40-61 to the south.  
3 So as you can see it's a rather expensive  
4 proposition to get a surveyor to do this for us. I  
5 guess I come to our dilemma. I can read your  
6 order, and I think to some degree it's clear, but  
7 what I'd really like to ask you is this what you  
8 really want us to do? Do you want us to spend this  
9 money to do an accurate survey of our metes and  
10 bounds description, locate it on the ground and map  
11 it if we don't have it mapped? We can do that.  
12 The second question we have is -- and  
13 again it's part of your order, it says -- although  
14 it's not in the order section, it's in the body of  
15 the order, it says, MAWC will also file maps and  
16 metes and bounds descriptions of all authorized  
17 service territory in the State to ensure a full,  
18 complete and accurate set as currently on record  
19 with the Commission. Some have read it and I think  
20 reasonably have read it to include the rest of  
21 St. Joseph, Joplin, Warrensburg, Brunswick, Mexico,  
22 those areas where we do not have any or very little  
23 metes and bounds description. We're required to go  
24 into those communities now and put a metes and  
25 bounds description on a certificated area for which



1 we've never had a metes and bounds description. We  
2 have not asked any bids on that. I mean, just  
3 extrapolating based on the money you have seen for  
4 these other three areas where we do have a metes  
5 and bounds description, it can be very, very  
6 expensive.

7 But that may be what you want us to do,  
8 but before we go and do it and expend the money to  
9 do it, we want to make sure this is exactly what  
10 you want us to do. And as I said, I keep coming  
11 back to the point that while a metes and bounds is  
12 precise, and we can do it on a going-forward basis  
13 whenever we or anybody else comes in for a  
14 certificated area, is it really necessary to spend  
15 all this money to do this kind of review at this  
16 point in time.

17 I think that's all I have at least in the  
18 way of my initial comments. If you have any  
19 questions or maybe you want to wait until you hear  
20 from other parties, I'll be happy to answer them.

21 JUDGE MILLS: We'll probably wait till we  
22 hear from the other parties.

23 Next, Staff?

24 MR. KRUEGER: We'll, I'm glad Mr. England  
25 decided to go first or was called upon to go first,

1     because he stated it much better than I could have  
2     the history of this case and so forth. I don't  
3     think he said anything with which I disagree, but  
4     there's just a couple of points that I'd like to  
5     add to it. It looks to me like we're talking about  
6     two different kinds of areas, the ones for Joplin,  
7     Warrensburg and Brunswick where the description is  
8     only of -- is very general. It refers to the city  
9     and vicinity or the city and adjacent areas. In  
10    those cases I don't think it's even possible to go  
11    out and find on the ground where the certificated  
12    area is.

13           As I understand it that's the purpose the  
14    Commission had in mind at the time that it entered  
15    this order, so that we could be able to locate on  
16    the ground where the certificated area is and to  
17    resolve possible disputes as to whether an area was  
18    included in the certificated area or not. So in  
19    those areas I would say that it's not even possible  
20    to do it.

21           And the others where there is the metes  
22    and bounds descriptions to a greater or lesser  
23    extent, I think it is possible. And in those cases  
24    the Staff's concern would be on whether it's a good  
25    necessary expenditure whether it's something that

1 the ratepayers would benefit from having done. And  
2 as Mr. England said, some of the areas it's easy to  
3 determine by going out there and looking at the  
4 land where a certificated area ends, such as where  
5 you come to a highway. I think the area that would  
6 be of greater concern is when you're going through  
7 that field that he mentioned.

8           And so the Staff's position on this would  
9 be to try to limit this survey to the extent that  
10 is necessary to accomplish the goal that we're  
11 seeking to achieve, which is to identify the  
12 certificated area in cases where there might  
13 possibly be doubt as to what it is. I haven't  
14 identified specifically the areas where this would  
15 be done, but I think this is the principles that  
16 should guide the Commission in determining this  
17 issue.

18           JUDGE MILLS: Mr. Coffman?

19           MR. COFFMAN: Thanks. I'm in general  
20 agreement with what Mr. England and Mr. Krueger  
21 have said. I don't believe it's necessarily  
22 reasonable to require Water Company to provide  
23 territorial description of their certificated area  
24 with the specificity that's normally associated  
25 with metes and bounds. And I guess for this

1 statement I'm speaking as far as the ratepayers are  
2 going, the numbers that we have seen provided by  
3 the Company are significant. We think they would  
4 have a rate impact, and unless you're talking about  
5 a situation where there is territorial conflicts  
6 such as St. Charles area or where some other  
7 problem arises, requiring a metes and bounds  
8 description is maybe more costly than actually the  
9 benefit to the public.

10 And so I'm concerned from the ratepayers  
11 perspective that this might be somewhat too much to  
12 be determined reasonable, but I'd also like you to  
13 look at this from the perspective, I guess of the  
14 member of the public who might be searching the  
15 Commission's records. You know, I think that the  
16 Commission's records should be as customer friendly  
17 as possible, and if I were, say, to build a house  
18 or plan on developing a piece of property in an  
19 area, I would look at the Commission's records to  
20 see if this property was in, you know, a utility's  
21 territory.

22 Now, if I had a map like this and the  
23 boundaries were drawn along, you know, common  
24 landmarks such as highways or other boundaries or  
25 section lines, I can probably tell pretty easily

1     whether the property I was considering was in  
2     Missouri-American Water Company's territory.  If I  
3     have to look at a metes and bounds description, I  
4     need someone else to decipher it for me, and it's  
5     not that helpful just to the general public who  
6     might be looking at the Commission's records.

7             So I think that in many instances perhaps  
8     the reasonable thing to do would be to require  
9     something lesser specificity or only require a  
10    metes and bounds description in those areas which  
11    are a matter of conflict or where there is some  
12    special reason to do so.  And then the only other  
13    comment I would have is that if the Commission in  
14    its judgment still believes that a metes and bounds  
15    description is something that this company should  
16    ultimately have to be very precise about where  
17    their boundaries are, I would urge that you allow  
18    them to do this over a very extended period of  
19    time.  Perhaps if they have to do all of their  
20    districts, perhaps they could do this over a five-  
21    or ten-year period.  That way the rate impact  
22    wouldn't be quite as severe.  That's all I have.

23            JUDGE MILLS:  Thank you.  Mr. Stewart?

24            MR. STEWART:  May it please the  
25    Commission, I may surprise you being the

1 representative of the water district here, but I'm  
2 not sure I disagree with the Staff or the Public  
3 Counsel generally. But I do have just a few  
4 comments.

5 First of all, this entire case which took  
6 about two years actually was started by the water  
7 district, and the reason it was started it was  
8 started with a complaint case, because in  
9 St. Charles County where the company did have a  
10 metes and bounds description, we discovered that  
11 the Company was serving outside of its certificated  
12 area, and we brought this complaint before the  
13 Commission. The Company then when realizing that  
14 they were, in fact, outside of their area, they  
15 filed for an area certificate, which is what they  
16 should have done.

17 In the course of those proceedings, I  
18 guess St. Charles is probably one of the best in  
19 terms of having the metes and bounds descriptions  
20 now of all of the areas, and certainly I think it's  
21 fair to say that the water district in St. Charles  
22 and the Company are very much in competition and  
23 will continue to be in competition, so you're  
24 likely to see things come out of that in the  
25 future.

1           But fundamentally I guess -- I think it's  
2   the exercise the Company has gone through thus far  
3   as a result of this case has pursuant to the  
4   Commission's directive, I might add, has been a  
5   good thing. It's good public policy for the soon  
6   to be the largest water company in the State to  
7   know where its service boundaries are. It's good  
8   public policy for this Commission to know where the  
9   service boundaries are, and certainly even to a  
10   lesser degree, I guess it's good for its  
11   competitors to know where its service boundaries  
12   are.

13           Now, how do you go about determining -- I  
14   mean, I think we all agree that the service  
15   boundaries need to be accurate. I agree with  
16   Public Counsel especially that the general public,  
17   a competitor, whoever needs to know by looking at a  
18   map or looking at the tariff, if possible, exactly  
19   where that line is. The question, and again, I'm  
20   not so sure I totally disagree with Mr. England on  
21   this, how do you get there? How do you get the  
22   accuracy that you're striving for?

23           We're not in a position being the water  
24   district of St. Charles to say one or the other  
25   what the Commission should do with the inherited

1 problem. I'll call it an inherited problem of the  
2 vicinity certificates in other parts of the State.  
3 I know that the Commission faces that same issue in  
4 the electric side. Frankly, back in the old days,  
5 a lot of certificates were granted that way. And,  
6 of course, where there's been competition and where  
7 there will be competition you're likely to see that  
8 in the future come up as being a problem.

9 Allegations by competitors of electric companies  
10 that they are serving outside their certificated  
11 area.

12           So this is a broader issue really than  
13 just Missouri-American Water Company and the water  
14 district in St. Charles that we're competing for a  
15 few customers. I think it's something fundamental  
16 that the Commission is going to have to deal with.  
17 And in that regard, if -- and Mr. England and I  
18 were talking about this before we came in and got  
19 on the record, if the A B C water company today  
20 would come before this Commission and ask to get a  
21 certificate to serve a particular area, we would  
22 have to comply with 2402.060 that requires a metes  
23 and bounds description, and a plat drawn to the  
24 scale of one half inch, et cetera, et cetera, by  
25 the Commission's own rule.



1           And I do, too -- this rule certainly  
2     predates my time at the Commission as well, but I  
3     think because of that rule, while you can't really  
4     get rid of the old problems in the vicinity issues  
5     necessarily, at least on a going-forward basis it's  
6     been a good thing. Just as it's been a good thing  
7     for the Company to go back and review its service  
8     territory.

9           So I'm not sure procedurally if -- I think  
10    legally the Company would not be required to go  
11    back necessarily in the St. Jo area and to try to  
12    comply with the rule that wasn't in place when the  
13    certificate was granted, but I think the Commission  
14    needs to ask itself what level of accuracy is  
15    needed, and that's something I think the Commission  
16    needs to determine, what is the comfort level of  
17    the accuracy on those older vicinity portions of  
18    their service territory.

19           The final point, I guess which is doing  
20    the on-the-ground inspection, I agree with  
21    Mr. England. I couldn't take a metes and bounds  
22    description myself and go out and walk property and  
23    get with any type of exactitude of what -- you  
24    know, exactly where the line should be. And I  
25    think the Commission in ordering the Company after

1     it had gone through all the paper review of what it  
2     had, its certificates, its tariff and after it had  
3     gone through this exhausting review on the paper  
4     side, it didn't ask the Company to take one more  
5     step, and that was, Well, go out in the field and  
6     make sure that you're not serving outside of your  
7     certificated area. Fundamentally a pretty  
8     reasonable request or directive from this  
9     Commission. That's what started the case in the  
10    first place. They were, in fact, outside of their  
11    certificated area.

12             And sure, things can happen. It is  
13    difficult to look, you know, to take a metes and  
14    bounds description and find out where you're going  
15    to lay the pipe. But some level of accuracy if  
16    it's not the on-the-ground step-by-step survey that  
17    appears to be necessary or appears to be what  
18    Mr. England is talking about, if not that, what?  
19    What can you do in its place? Frankly, I'm not  
20    sure. I'm not sure. But I think it's important  
21    that the Commission at least assures itself of  
22    those two things that the Company's tariffs and  
23    certificates are accurate on one hand, and then  
24    when out in the field the service territory matches  
25    the authorization granted by the Commission. How

1     you get there I'll leave up to the discretion of  
2     the Commission, but those were the fundamental  
3     issues that prompted us to bring the complaint  
4     initially, and it's something that I think the  
5     Commission recognized in its order even though  
6     maybe it had some unintended consequences. It's  
7     something that the fundamental issue still remains  
8     and that's accuracy and assuring yourself that the  
9     Company is living up to its authorization and no  
10    more. That's all really I have to say.

11           JUDGE MILLS: Thank you.

12           Do you have anything to add, Mr. England,  
13    before we go on to questions from the Bench?

14           MR. ENGLAND: No, thank you.

15           JUDGE MILLS: Chair Lumpe?

16           CHAIR LUMPE: Yes. Mr. England, you  
17    started out by saying you have a preference. Would  
18    you describe that preference?

19           MR. ENGLAND: Yes, ma'am. My preference  
20    is particularly for those areas such as Joplin,  
21    Warrensburg, Mexico, Brunswick and St. Joseph or at  
22    least that portion of St. Joseph where we have  
23    those rather loosely described descriptions that we  
24    maintain that, that we not be required to put a  
25    metes and bounds description around those areas.

1 And it requires obviously a little bit of judgment  
2 when your certificate says, for example, St. Joseph  
3 and vicinity, how far is the vicinity. So as far  
4 as the eye can see, what measure do you put on it.  
5 The problem we've run into or that we've speculated  
6 is if we attempt to put some sort of boundaries  
7 around St. Joseph, for example, we do have other  
8 water districts in that area outside the City of  
9 St. Joseph, and they may view this as an  
10 opportunity by us to encroach upon them or expand  
11 our certificated areas, and we may be buying some  
12 litigation by attempting to define it, whereas  
13 right now at least for the time being we haven't,  
14 knock on wood, seemed to have too much trouble.

15 In those areas where we have metes and  
16 bounds descriptions and have been able to verify  
17 those metes and bounds descriptions by review of  
18 your-all's records, I don't know what purpose it  
19 would serve to go on the ground and say the  
20 Buchanan County water district area. I don't think  
21 we've got much dispute there. We bought out the  
22 water district. I don't know that there's anybody  
23 competing with us.

24 In St. Charles obviously that's a  
25 different story and we need to be very attuned to

1     where our lines are in particular that are that I  
2     mentioned to you that right now is undeveloped, but  
3     if you're at all familiar with St. Charles County,  
4     it won't be long before somebody develops it. So  
5     maybe one or the other aspects of this case that  
6     Mr. Steward refers to is, we've become a lot more  
7     sensitive to our certificated area and certainly  
8     are going to be hopefully a little more attentive  
9     to filing quicker applications for additional  
10    certificated area if we need it.

11           In the Platte County area, we're right on  
12    top of water district -- or not on top of -- but  
13    there is some substantial overlap between us and a  
14    water district. And as a matter of fact, we are in  
15    Federal Court in a matter involving the water  
16    district there over some territory. Maybe it would  
17    be appropriate to do some on-the-ground review of  
18    those metes and bounds to make sure that we're not  
19    outside our certificated area, because obviously  
20    that's a sensitive area, that and St. Charles.

21           The other side of me -- I look at these  
22    figures, and I just have a hard time believing that  
23    you want us to spend this kind of money to get on  
24    the ground and walk this stuff at this point in  
25    time. So I guess if I had my druthers, I'd rather

1     just say, Let's stop it right now. I think it's  
2     been a good exercise, but I think it's going to get  
3     awfully costly and I'm not sure the benefit is  
4     worth it.

5             CHAIR LUMPE: And on a going-forward basis  
6     based on the rule if you were seeking to serve  
7     additional territory, you would do metes and bounds  
8     or manage some sort of meeting restrictions?

9             MR. ENGLAND: Absolutely. We'd comply  
10    with your rule. And while that can be costly,  
11    everyone to my knowledge has been able to do that  
12    in recent years, comply with the rule and provide a  
13    metes and bounds description.

14            Now, it may be that we can come up with a  
15    legal description. Remember I mentioned to you  
16    that sometimes a legal description isn't always a  
17    metes and bounds description. At that point in  
18    time we might instead file a legal description that  
19    might better identify -- ironically it might better  
20    identify the boundaries on the ground than a metes  
21    and bounds description, but it technically is in  
22    compliance with your rules. But I think at that  
23    point we'd specifically ask for a waiver of the  
24    metes and bounds requirement, but it's our intent  
25    generally speaking to file a metes and bounds

1 description with every new application.

2 CHAIR LUMPE: It would appear to me that  
3 it's somewhat amazing that there haven't been more  
4 disputes with the vagueness of these terms, and I  
5 was going to ask you whether -- and I think you  
6 have answered it -- but in your interest to have a  
7 precise description as opposed to these vague  
8 descriptions that it might prevent disputes that  
9 sort of listen to Staff's counsel, I don't know how  
10 you would define in the vicinity.

11 MR. ENGLAND: It's very difficult. One of  
12 the things we're looking at right now is, I think a  
13 new well in the Warrensburg district and it's  
14 outside the city limits, but it's on property maybe  
15 that's adjacent to the city limits. And so the  
16 question is, do we need an additional certificate  
17 for it or is it covered by the adjacent language of  
18 the certificate. And what we've done is visit with  
19 Staff on some of those things, too, and I think  
20 we'll continue to do that. Like I said, it's  
21 really an area of judgment.

22 CHAIR LUMPE: I guess my question would  
23 be, given that would you find it in your best  
24 interest to then ask for a certificate that you  
25 wouldn't be arguing the vagueness of adjacent to or

1 in the vicinity of if you do want to put that well  
2 there?

3 MR. ENGLAND: In those areas where we  
4 could see in the future disputes, you're right, it  
5 would be in our interest to come in and get a  
6 certificate so that that --

7 CHAIR LUMPE: Give it the accuracy?

8 MR. ENGLAND: Exactly. Give it the  
9 accuracy and foreclose hopefully any debate down  
10 the road.

11 CHAIR LUMPE: I think that's all of my  
12 questions.

13 JUDGE MILLS: Vice Chair Drainer?

14 COMMISSIONER DRAINER: Good afternoon,  
15 Mr. England.

16 MR. ENGLAND: Good afternoon.

17 COMMISSIONER DRAINER: So to summarize are  
18 you basically asking that the Commission consider  
19 that you have satisfied, the Company has satisfied  
20 the requirements of reviewing its service  
21 territories and that you would file a report that  
22 basically gave the information you showed us today  
23 that showed where there were metes and bounds and  
24 would define that some of these areas that go back  
25 such as Brunswick in 1919 were basically



1 descriptions that said in and about?

2 MR. ENGLAND: That would be my preference,  
3 but I recognize that given your language if I do  
4 request that, I have not complied with -- I mean, I  
5 think I'd have to request a waiver from the further  
6 requirements. I think we've done some of which  
7 you've asked us to do, but in all fairness we  
8 haven't done it all. So I'm asking for hopefully a  
9 waiver from the additional requirement of the  
10 on-the-ground inspection.

11 COMMISSIONER DRAINER: All right. But  
12 you're asking that we would accept this as enough?

13 MR. ENGLAND: Yes.

14 COMMISSIONER DRAINER: And then the part  
15 that you didn't read to the original order when you  
16 discussed page 10, started with that the Commission  
17 had found that MAWC operated outside of its  
18 approved service area?

19 MR. ENGLAND: Correct.

20 COMMISSIONER DRAINER: So I guess my  
21 question would be if this Commission were to give  
22 you a waiver to be on the ground and the further  
23 definition of metes and bounds and can MAWC state  
24 that it is now not operating outside of its service  
25 area?

1                   MR. ENGLAND: We could -- I can't make  
2     that statement today quite honestly. I feel pretty  
3     confident that we're not, but I think there are  
4     some areas having gone through this exercise that  
5     we want to take a little closer look at. And if  
6     you would like us to make that statement for  
7     purposes of the -- of making the report that you  
8     were talking about, we can go back and just double  
9     check. I mean, we view this -- quite honestly it  
10    was not a complete waste of time or money. I think  
11    this was a good exercise. I think as I said, if  
12    nothing else it's got everybody in the company  
13    aware of the importance and significance of  
14    certificated areas. And I think it also may point  
15    out some areas where we need to take a closer look  
16    to make sure we're not outside our certificated  
17    area. But I honestly can't tell you today we are  
18    absolutely within all of these areas.

19                  COMMISSIONER DRAINER: And to get to some  
20    of your discussion with Chair Lumpe, if there are  
21    areas that you had a concern about, those areas  
22    having reviewed the territory you would be coming  
23    in for certificates to kind of --

24                  MR. ENGLAND: Right. That's correct. May  
25    I -- and I'm sorry this is the --

1 COMMISSIONER DRAINER: Sure.

2 MR. ENGLAND: And I guess it's the lawyer

3 in me or the need to have something else to say in

4 me, the order does say --

5 COMMISSIONER DRAINER: Would you like to

6 be able to say it then?

7 MR. ENGLAND: Please.

8 COMMISSIONER DRAINER: Okay.

9 MR. ENGLAND: The order that I was quoting

10 from was the original order. And the reason I did

11 not recite that language is because you-all

12 corrected it in a subsequent order, and I didn't

13 want to misstate it. You're right that you did

14 find we were operating outside of approved

15 certificated area, but in the original order it

16 said in three areas. I think you corrected it. I

17 think there were only two areas that we were

18 outside our certificated area. And I guess in

19 response to Mr. Stewart, although they got to you

20 first with the complaint case, we were in the

21 process of preparing a certificate case. So it

22 wasn't like their complaint case triggered the

23 certificate case. We knew we needed a certificate

24 and were in the process of working on that at the

25 time.

1                   COMMISSIONER DRAINER: Okay. So to  
2     summarize you would do a report, you would clean up  
3     the areas where you may feel there's now a concern  
4     having gone through this process in areas that need  
5     a certificate, and if we did not -- if we gave you  
6     a waiver from the on-the-ground inspection it could  
7     save significant dollars. And I guess I would ask  
8     Staff if they have any concerns with that  
9     approach.

10                  MR. KRUEGER: No.

11                  COMMISSIONER DRAINER: And does the Office  
12     of the Public Counsel?

13                  MR. COFFMAN: No. I think we would be  
14     satisfied with that.

15                  COMMISSIONER DRAINER: And, Mr. Stewart?

16                  MR. STEWART: As long as the Staff was  
17     convinced that it was fine, I don't think we have  
18     any problem with it.

19                  COMMISSIONER DRAINER: Thank you. I have  
20     no other questions.

21                  MR. ENGLAND: Thank you.

22                  JUDGE MILLS: Commissioner Schemenauer?

23                  COMMISSIONER SCHEMENAUER: I have no  
24     questions.

25                  JUDGE MILLS: I just -- and maybe time has

1 passed and this is moot and certainly based on the  
2 questions that Vice Chair Drainer just asked of the  
3 other three parties, maybe it is moot, but on  
4 page 4 of the December 11, 1998 motion that  
5 Missouri-American Water Company filed, and let me  
6 ask you this first of Mr. England. In the end of  
7 paragraph 9 on page 4 the motion states that the  
8 Missouri-American Water Company's understanding  
9 that some parties believe that the  
10 Missouri-American Water has been ordered to develop  
11 a comprehensive legal description for those  
12 districts where none currently exists.

13 Is it Missouri-American Water Company's  
14 position that you were not ordered to do that, or  
15 you think you were ordered to do that but you don't  
16 really want to?

17 MR. ENGLAND: I think initially we didn't  
18 read it that way, the way that either Staff -- I  
19 can't recall now whether it was Staff or Public  
20 Counsel or both. Going back and looking at it I  
21 think I tend to agree with them that we were  
22 ordered to do that. And I guess that's why I  
23 wanted really this opportunity to visit with  
24 you-all because given the magnitude of that task, I  
25 wanted to know if you really wanted us to do that.

1     So I mean, I think I understand that's what you  
2     wanted to do, but my real task today was to find  
3     out after explaining to you the cost involved and  
4     where we were starting from, whether that's what  
5     you really wanted us to do or not.

6             And my understanding was, although, I  
7     think Staff or Public Counsel thought that was a  
8     requirement and they can speak for themselves, but  
9     they also wondered if that's what you really wanted  
10    us to do.

11            JUDGE MILLS:  And if there's anything  
12    different, speak up now, but I think you-all were  
13    fairly clear in response to Vice Chair Drainer that  
14    you would be satisfied with what the company has  
15    proposed; is that correct?

16            MR. STEWART:  Judge Mills, I'm assuming  
17    that when the report is filed, it would be filed in  
18    this case and we can get a copy of it, I was  
19    assuming that.

20            JUDGE MILLS:  Sure.

21            MR. COFFMAN:  If I recall the issue that  
22    you were referring to, Judge, is the one where the  
23    order was perhaps in the body but wasn't in the  
24    ordered section and that's the confusion.

25            JUDGE MILLS:  I have no other questions.

1                   Is there anything further from the Bench?

2                   COMMISSIONER DRAINER: Just one question.

3                   With respect to the drawing out of maps  
4   that basically as you stated can use highways  
5   instead of doing sections and townships and ranges  
6   and that type of thing, that's what metes and  
7   bounds are, right?

8                   MR. ENGLAND: That's correct.

9                   COMMISSIONER DRAINER: And then when you  
10   were talking about Warrensburg and putting a new  
11   well in, are you telling me -- I just want to be  
12   clear -- that it's really not even possible to get  
13   a map to get roadways and draws it out because when  
14   you talk of things like vicinity, then it gets a  
15   little vague on even what road and a rural area  
16   perhaps would be the appropriate line.

17                  MR. ENGLAND: I need to visit with Bill,  
18   but I'll speak and then find out whether I misspeak  
19   or not. I mean, my understanding --

20                  COMMISSIONER DRAINER: I'll watch to see  
21   if he's frowning.

22                  MR. ENGLAND: My understanding is that in  
23   each district we certainly have maps of our lines.  
24   Now, whether we put a boundary around it or other,  
25   you know, sort of line on a map going out, I don't

1 think we quite put a boundary, but we know where  
2 our lines are in each area. And if your question  
3 is can we draw a map around that, I suppose we can  
4 do that. I don't know what the cost would be on  
5 that. Certainly far less than the metes and bounds  
6 that you're talking about.

7 COMMISSIONER DRAINER: But it could be  
8 then if you did that, that that is -- those lines  
9 are really maybe a generalization because again the  
10 road that you draw those lines around may not be as  
11 accurate. Because when you're saying vicinity, you  
12 were saying that that was a vague term, and so I  
13 don't see --

14 MR. ENGLAND: Right. Well --

15 COMMISSIONER DRAINER: You can draw your  
16 line around it because I don't know what that --

17 MR. ENGLAND: Well, that's true. I mean,  
18 maybe the point is that even if we were to draw a  
19 line around where we are today, if that line abuts  
20 or is actually inside the city limits today, that  
21 may be more restrictive than what our true  
22 authority is because we've at least -- we know  
23 we've got to the city limit or we think we have at  
24 least to the city limits. And if it's a vicinity  
25 or adjacent as it is in Warrensburg, presumably



1 we've got a little bit of leeway to go just on the  
2 other side of the city. And then you've got the  
3 problem where the city annexes areas over time, I  
4 would view the certificate to grow or to change as  
5 the city annexes areas. So if the City of  
6 Warrensburg were to expand their city limits, I  
7 think we view, at least we believe reasonably view,  
8 that our certificate would incorporate that new  
9 area even though we might not have been there  
10 before.

11 COMMISSIONER DRAINER: Thank you.

12 JUDGE MILLS: Chair Lumpe?

13 CHAIR LUMPE: Unless there's somebody  
14 already serving outside of that city limit, and  
15 then we get the contest?

16 MR. ENGLAND: Well, then you may find  
17 somebody who claims that we don't have the  
18 authority. But I guess if I were to guess right or  
19 die right now, my position I would take so, I think  
20 if the city expands its boundaries, we have the  
21 authority to expand ours contemporaneously or  
22 coterminously. Mr. Stewart may find himself with a  
23 number of public water supply districts just  
24 outside the city limits who would like to challenge  
25 that, and I'm sure he can make a very capable

1 argument against me, but I think can make a  
2 straight-faced argument in favor of my proposition  
3 as well.

4 JUDGE MILLS: Anything further from the  
5 parties? Saying nothing, we're off the record.

6 WHEREUPON, the hearing of this case was  
7 concluded.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25