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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

HEARING

March 5, 2001
Jefferson City, Missouri
Volume 1

In the Matter of the Joint)
Application of the Public)
Water Supply District No. 3) Case
of Franklin County, Missouri,) No. WO-2001-326
and the City of Washington,)
Missouri, for Approval of a)
Territorial Agreement Concerning)
Territory Encompassing Part of)
Franklin County, Missouri.)

BEFORE:

KEITH THORNBURG, Presiding,
REGULATORY LAW JUDGE.

REPORTED BY:

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9 City of Washington, Missouri.

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20 FOR: Staff of the Missouri Public Service
21 Commission.

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

2 (EXHIBIT NOS. 1 THROUGH 3 WERE MARKED FOR
3 IDENTIFICATION BY THE COURT REPORTER.)

4 (Written Entries of Appearance filed.)

5 JUDGE THORNBURG: Good afternoon. My name
6 is Keith Thornburg. I'm the Regulatory Law Judge
7 assigned to this case.

8 We're convening for a hearing on a
9 territorial agreement with the application filed in
10 Case No. WO-2001-326. The style of the case is, In
11 the matter of the Joint Application of the Public
12 Water Supply District No. 3 of Franklin County,
13 Missouri, and the City of Washington, Missouri, for
14 approval of Intergovernmental Territory Agreement
15 concerning territory encompassing part of Franklin
16 County, Missouri.

17 At this time I'd like to take entries of
18 appearance, and we would start with counsel for the
19 Applicant.

20 MR. STEWART: Charles Brent Stewart of the
21 law firm of Stewart & Keevil, L.L.C., 1001 Cherry
22 Street, Suite 302, Columbia, Missouri, 65201,
23 appearing on behalf of Public Water Supply District
24 No. 3 of Franklin County, Missouri, and the City of
25 Washington, Missouri, the Joint Applicants in this

1 case.

2 I also have with me, your Honor, James
3 Briggs, who is the City Administrator of Washington,
4 Missouri, unless -- if the Bench has any questions.

5 JUDGE THORNBURG: Thank you very much,
6 Mr. Stewart.

7 And for the Missouri Public Service
8 Commission Staff?

9 MR. SNODGRASS: Yes. Thank you very much,
10 Judge.

11 My name is Cliff Snodgrass. I'm appearing
12 today on behalf of the Staff of the Missouri Public
13 Service Commission. My business mailing address is
14 Governor Office Building, Suite 800, 200 Madison
15 Street, P.O. Box 360, Jefferson City, Missouri.

16 I'm standing in today in place of Keith
17 Krueger who has a conflict in his schedule today,
18 Judge.

19 JUDGE THORNBURG: Thank you.

20 And for the Office of Public Counsel?

21 MR. COFFMAN: John Coffman, appearing on
22 behalf of the Office of the Public Counsel, P.O.
23 Box 7800, Jefferson City, Missouri, 65101.

24 JUDGE THORNBURG: Do we have any exhibits to
25 be presented to be marked?

1 MR. SNODGRASS: Yes, Judge. We have three
2 exhibits in this case. I have taken the liberty of
3 marking them numerically, one, two, and three. The
4 originals of these exhibits are in the Court's file.
5 These would be copies. And I'll bring that foundation
6 out on the record.

7 JUDGE THORNBURG: Thank you very much.

8 Mr. Stewart, I believe you reserved an
9 exhibit number. I think at this time we're probably
10 ready to begin with opening statements.

11 Does anyone else have any other matters to
12 bring to me before we begin?

13 (No response.)

14 JUDGE THORNBURG: Then, Mr. Stewart, you can
15 address the exhibit issue in your statement. And at
16 this time, you may proceed.

17 MR. STEWART: Thank you, your Honor.

18 I really don't have an opening statement.

19 I do want to bring to the Commission's
20 attention a small problem we discovered on Pages 6 and
21 7 of the territorial agreement as filed.

22 Specifically dealing with Paragraph 8 at the
23 bottom of the page, there is a sentence there that
24 states, "Performance of the parties is contingent upon
25 all of the following having occurred no later than

1 blank, 2000 blank."

2 Obviously, that needs to be corrected for
3 purposes of the agreement for the Commission to
4 review.

5 And what I would propose, if there is no
6 objection, is that I will have the Joint Applicants
7 execute a revised Page 6 and 7 that will resolve that
8 particular problem. We would be resubmitting that as
9 a late-filed exhibit, I believe Late-filed Exhibit
10 No. 4.

11 I think we should be able to get that to the
12 Commission on or before, hopefully before, March the
13 13th in time that we wouldn't run into any statutory
14 operation of law problems with the filing.

15 And with that, I have no further statement.

16 JUDGE THORNBURG: With respect to the late
17 filing of proposed Exhibit No. 4, the Bench finds
18 that filing no later than March 13th to be
19 acceptable.

20 I would direct that if any parties have
21 responses to that exhibit that they be filed no later
22 than Friday, March the 16th.

23 MR. SNODGRASS: March what, Judge? Excuse
24 me.

25 JUDGE THORNBURG: March 16th.

1 MR. SNODGRASS: March 16th. Thank you.

2 JUDGE THORNBURG: And that would then allow
3 the Commission sufficient time to consider the
4 complete record and consider the order in this case.

5 Do any of the other parties have opening
6 statements? Does the Office of Public Counsel?

7 MR. COFFMAN: I have no opening statement.

8 Our interest is not very serious in this
9 case in that neither of these two entities that are
10 trying to form a territorial agreement have -- none of
11 the rates of their customers are regulated. But as
12 far as we can tell, this is in the public interest to
13 approve.

14 JUDGE THORNBURG: Thank you.

15 And Staff, did you have an opening
16 statement?

17 MR. SNODGRASS: Your Honor, I really don't
18 have an opening statement other than to say that
19 Staff's witness and expert has looked over the
20 documents and exhibits we're going to present to you
21 today, and we believe that these exhibits are not
22 harmful to the public interest.

23 JUDGE THORNBURG: And then I'll ask and
24 state that it is my understanding we have one witness
25 to be presented today, and that's with the Staff of

1 the Missouri Public Service Commission?

2 MR. SNODGRASS: That's correct, Judge.

3 And let me revise my opening that the
4 transaction sought to be approved is not detrimental
5 to the public interest. That would be our opening
6 statement from our perspective.

7 JUDGE THORNBURG: Okay. And, Mr. Stewart,
8 you did bring a witness with you today in the event we
9 do have questions?

10 MR. STEWART: Correct.

11 JUDGE THORNBURG: Thank you.

12 MR. STEWART: Mr. Briggs from the City of
13 Washington.

14 JUDGE THORNBURG: Who you introduced at the
15 beginning of your statement.

16 Thank you.

17 Mr. Snodgrass, you may proceed.

18 MR. SNODGRASS: Thank you, Judge.

19 At this time, with your permission, Judge,
20 the Staff would call Dale Johansen to the stand.

21 (Witness sworn.)

22 JUDGE THORNBURG: Thank you.

23 You may be seated.

24 Mr. Snodgrass, you may proceed.

25 MR. SNODGRASS: Thank you, your Honor.

1 DALE JOHANSEN testified as follows:

2 DIRECT EXAMINATION BY MR. SNODGRASS:

3 Q. Sir, would you please state your name and
4 business address for the record?

5 A. Dale Wayne Johansen, Post Office Box 360,
6 Jefferson City, Missouri, 65102.

7 Q. And by whom are you employed and in what
8 capacity, sir?

9 A. I work for the Missouri Public Service
10 Commission. I am the manager of the Water and Sewer
11 Department in the Commission's Utility Operations
12 Division.

13 Q. And how long have you worked at the
14 Commission?

15 A. Nearly 18 and a half years.

16 Q. And how long have you been in your current
17 position?

18 A. Almost six years.

19 Q. I'm handing you what's been previously
20 marked as Exhibit No. 1.

21 And I furnished copies to counsel of record,
22 and the court reporter also has them for the record.

23 Let me show this exhibit to you, sir. I ask
24 that you look at it.

25 Are you familiar with that document?

1 A. Yes, I am.

2 Q. Would you describe that document for the
3 Court, please?

4 A. Certainly. This is the Amended Joint
5 Application for Approval of a Territorial Agreement
6 which was jointly filed by Public Water Supply
7 District No. 3 of Franklin County and the City of
8 Washington.

9 Attached to the application as Appendix A is
10 a copy of the Intergovernmental Territorial Agreement
11 between the District and the City and then attached to
12 the Territorial Agreement are Exhibit A, which is a
13 map showing the areas in which the District shall have
14 the right to provide service to existing and future
15 customers, and also Exhibit B, which is a map showing
16 the areas in which the City shall have the right to
17 provide service to existing and future customers.

18 Q. Now, Exhibit No. 1 is a copy; is that
19 correct?

20 A. Yes, it is.

21 Q. Where is the original of this document?

22 A. It's in the case papers for this case.

23 Q. Is the copy that I have showed you a true
24 and accurate copy of the original that's filed in the
25 court file?

1 A. Yes, it is.

2 Q. I'm also now --

3 Judge, may I approach the witness?

4 JUDGE THORNBURG: Yes, you may.

5 BY MR. SNODGRASS:

6 Q. All right. I'm showing you, sir, what's
7 been marked by me as Exhibit No. 2. Would you examine
8 that document, please?

9 A. (Complied.)

10 Q. Are you familiar with that document?

11 A. Yes.

12 Q. Would you describe that document for the
13 Court?

14 A. Yes. This is a legal description that
15 designates the boundaries between the territories of
16 the District and the City and also includes a
17 transmittal letter from Cochran Engineering &
18 Surveying, which is the company that performed the
19 survey and prepared the legal description.

20 This particular document was filed in the
21 case as Appendix B to the Amended Joint Application
22 for Approval of the Territorial Agreement.

23 Q. And the original of Exhibit No. 2 is in the
24 court file; is that correct?

25 A. That's correct.

1 Q. And the copy that I've shown you is a true
2 and accurate copy of the original?

3 A. Yes, it is.

4 Q. All right. Sir, may I show you what's been
5 marked as Exhibit No. 3 for identification and ask you
6 to examine that document.

7 A. (Complied.)

8 Q. Are you familiar with that document?

9 A. Yes, I am.

10 Q. Would you describe that document for the
11 Court, please.

12 A. Yes. This is the Unanimous Stipulation and
13 Agreement that the parties to this case filed with the
14 Commission on February 22nd, 2001.

15 Q. All right. Now, is the original of that
16 document in the court file?

17 A. Yes, it is.

18 Q. Is the copy that I've presented to you a
19 true and accurate copy of the original in the court
20 file?

21 A. Yes.

22 Q. All right. In your capacity as manager of
23 the Commission's Water and Sewer Department,
24 Mr. Johansen, have you had an opportunity to review
25 the Amended Joint Application, the Territorial

1 Agreement, and the attachments to those documents?

2 A. Yes, I have.

3 Q. Have you also examined the Stipulation and
4 Agreement in this case?

5 A. Yes.

6 Q. Would you briefly describe your review of
7 these documents for the court?

8 A. First of all, I reviewed the provisions of
9 the Amended Joint Application, as well as the
10 provisions of the Territorial Agreement and the
11 attachments. I then compared the provisions of those
12 documents to the statutory requirements that are
13 applicable to water service territorial agreements
14 which are found at Section 247.172 of the Revised
15 Statutes of Missouri.

16 Q. And would you please summarize the
17 applicable statutory requirements in this case as you
18 understand them, Mr. Johansen?

19 A. Yes. First of all, the territorial
20 agreement must specifically designate the boundaries
21 of the water service areas of each provider that is
22 subject to the agreement. Second, the agreement must
23 specify the powers granted by the entities that are
24 subject to the agreement to operate within one
25 another's corporate boundaries.

1 Third, the Commission's approval of a
2 territorial agreement must not in any way affect or
3 diminish the rights and duties of any other water
4 supplier that is not a party to the agreement to
5 provide service within the boundaries designated in
6 the agreement.

7 And, fourth, the Commission may only approve
8 a territorial agreement after an evidentiary hearing
9 is held and after the Commission determines that
10 approval of the agreement is not detrimental to the
11 public interest.

12 Q. Sir, based on your review of the Amended
13 Joint Application and the Territorial Agreement and
14 the attachments to those documents which are now
15 marked as exhibits, is it your opinion that the
16 applicable statutory requirements have been met in
17 this case?

18 A. Yes, it is. Exhibits A and B to the
19 Territorial Agreement and Appendix B to the Amended
20 Joint Application designate the boundaries of the
21 water service areas of the District and the City, and
22 the Territorial Agreement sets out the powers that
23 each party grants to the other to operate within the
24 boundaries of their respective service areas.

25 Additionally, the Territorial Agreement does

1 not contain any provision that affects or diminishes
2 the right of any water service provider that is not a
3 part to the agreement, and Paragraph 8 of the Amended
4 Joint Application specifically recognizes that.

5 Lastly, as a result of the items I just
6 mentioned and of comments that I will make later, I
7 also believe that Commission approval of the agreement
8 would not be detrimental to the public interest.

9 Q. Mr. Johansen, are you aware of any customer
10 inquiries or complaints that have been received
11 regarding the Amended Joint Application or the
12 Territorial Agreement, sir?

13 A. To my knowledge, the Staff has not received
14 any customer contacts of any kind regarding the
15 application or the agreement, and this is based upon
16 responses to inquiries that I made of my Staff as well
17 as the Commission's Consumer Services Department Staff
18 regarding any customer contacts that they may have
19 received.

20 And also I would state that if any other
21 members of the Staff had received customer contacts,
22 then I'm sure I would have been informed of those.

23 Q. Will any existing customers experience a
24 change in water service provider upon implementation
25 of this Territorial Agreement, sir?

1 A. No, they won't. As is noted in Paragraph 6
2 of the Amended Joint Application, no existing
3 customers of either the City or the District will
4 experience a change in water service providers if the
5 Territorial Agreement is approved and implemented.

6 Q. Is there anything else that the Commission
7 should consider in reaching its decision on whether to
8 approve the Amended Joint Application and
9 Intergovernmental Territorial Agreement, sir?

10 A. Yes, there are two additional items that I
11 believe the Commission should consider. First, the
12 sums that will be paid to the District by the City
13 under the agreement will then be available for the
14 District's use in expanding its service to other
15 portions of its service territory that are not
16 affected by the agreement.

17 And, second, implementation of the agreement
18 will clearly preclude the wasteful duplication of
19 facilities and services by the City and District in
20 the service areas that are the subject of the
21 agreement.

22 Q. Thank you, sir.

23 Do you have anything else to add at this
24 time?

25 A. No, I do not.

1 MR. SNODGRASS: Judge, we have no further
2 questions.
3 We'd ask that our Exhibits 1 through 3 be
4 admitted into the evidentiary record in this occasion.
5 JUDGE THORNBURG: Are there any objections
6 to the -- to the acceptance of Exhibits 1, 2, and 3
7 into the record?
8 MR. COFFMAN: No objection.
9 MR. STEWART: No objection.
10 JUDGE THORNBURG: Hearing no objections, the
11 exhibits are admitted and made a part of the record,
12 And those are Exhibits 1, 2 and 3.
13 (EXHIBIT NOS. 1 THROUGH 3 WERE RECEIVED INTO
14 EVIDENCE.)
15 MR. SNODGRASS: We have nothing further at
16 this time from the Staff, Judge.
17 JUDGE THORNBURG: Mr. Stewart, did you have
18 any cross-examination?
19 MR. STEWART: No cross. Thank you.
20 JUDGE THORNBURG: Mr. Coffman?
21 MR. COFFMAN: No, thank you.
22 JUDGE THORNBURG: The Bench has a couple of
23 questions.
24 QUESTIONS BY JUDGE THORNBURG:
25 Q. Mr. Johansen, you may have covered this, but

1 I wanted to make certain that I didn't mishear you or
2 did not hear it.

3 Do these respective water systems, public
4 water supply systems, do they have in your opinion the
5 capacity to provide adequate services to the areas
6 designated?

7 A. Oh, definitely so.

8 Q. And then I have one other question for you,
9 and I want the counsel to consider this also.

10 You made a reference to the payments to the
11 Water District by the City.

12 A. Yes.

13 Q. And I believe if you turn to Page 4 of the
14 agreement, that's where that provision exists. And
15 it's at the first -- beginning of the first full
16 paragraph that begins, "The rate of \$100 per acre
17 payment" --

18 A. Yes.

19 Q. Would you read that paragraph to yourself
20 and become familiar with it?

21 A. (Complied.)

22 Okay.

23 Q. Now, one concern I had -- and I don't want
24 to create confusion in the record or with the
25 agreement.

1 But when I initially read that paragraph, I
2 initially concluded that that was a provision for
3 annual payments from the time of the annexation of the
4 territory, but after further consideration, it
5 appeared that perhaps it's a single payment at the
6 time of the annexation of the territory from the
7 District to the City with an escalator in the
8 amount -- and how the amount of that annual payment --
9 excuse me -- of that single payment would be
10 determined. I may not have made that clear.

11 Mr. Johansen, in reading that, and if you've
12 had any review with the Applicants, do you understand
13 that as a single payment with no further obligation of
14 payment, or do you view that as an annual payment from
15 the time of the annexation on?

16 A. My understanding is that it is a single
17 payment that occurs at the time of an annexation. For
18 example, if the -- if there was an annexation of ten
19 acres, there would be a payment of \$1,000, and that
20 \$100 per acre payment would occur each and every time
21 there was a subsequent annexation during the first
22 five years. And after that is when the escalator
23 clause kicks in.

24 But it's my understanding that it is a
25 single payment that would occur each time an

1 annexation happens.

2 Q. And the single payment would fully satisfy
3 the City's obligation to the District?

4 A. That's my understanding, yes.

5 Q. And the purpose of the escalator is simply
6 to recalculate that single payment in the future?

7 A. Correct. That's my understanding.

8 Q. And with respect to one particular
9 annexation, you don't understand this is a requirement
10 for annual payments to continue indefinitely from the
11 time of the annexation?

12 A. No, I do not understand it that way.

13 JUDGE THORNBURG: Thank you.

14 Is there any redirect based on my questions?

15 MR. SNODGRASS: No, Judge.

16 JUDGE THORNBURG: Is there any recross based
17 on my questions, Mr. Stewart?

18 MR. STEWART: No recross.

19 The way Mr. Johansen responded to your
20 payment question per annexation, that is also my
21 understanding, and I would just offer Mr. Briggs,
22 too, if you would like to ask him that question as
23 well. He could state it for the record from our
24 perspective.

25 JUDGE THORNBURG: I think we might do that

1 today, just to avoid any confusion I might have
2 caused.

3 Mr. Coffman?

4 MR. COFFMAN: No questions.

5 JUDGE THORNBURG: Thank you.

6 Mr. Johansen, I don't believe there is any
7 further -- or any further questions for you, and you
8 may be excused at this time.

9 THE WITNESS: Okay. Thank you.

10 (Witness excused.)

11 JUDGE THORNBURG: Mr. Stewart, would you
12 like to call a witness at this time?

13 MR. STEWART: I'll be happy to do so if the
14 Bench would like to question him. We had not prepared
15 any Direct Testimony, but we would certainly.

16 JUDGE THORNBURG: That would be appropriate.

17 MR. STEWART: The Joint Applicants call
18 Mr. James A. Briggs to the stand.

19 (Witness sworn.)

20 JUDGE THORNBURG: Thank you.

21 You may be seated.

22 Mr. Stewart, would you like to do the
23 preliminary introductions and questioning of your
24 witness?

25 MR. STEWART: Sure.

1 JAMES A. BRIGGS testified as follows:

2 DIRECT EXAMINATION BY MR. STEWART:

3 Q. Would you please state your full name for
4 the record?

5 A. James A. Briggs.

6 Q. By whom -- by whom are you employed?

7 A. The City of Washington, Missouri.

8 Q. And what is your position with the City of
9 Washington?

10 A. I am the City Administrator.

11 Q. Have you -- in the course of your work as
12 City Administrator, have you had any involvement or
13 are you familiar with the Amended Joint Application
14 for Approval of a Territorial Agreement that's the
15 subject of this proceeding entered into between Public
16 Water Supply District No. 3 of Franklin County,
17 Missouri and the City of Washington?

18 A. Yes, I am.

19 MR. STEWART: I tender the witness.

20 QUESTIONS BY JUDGE THORNBURG:

21 Q. Mr. Briggs, were you present during the
22 questioning of the Staff witness, Dale Johansen?

23 A. Yes, sir.

24 Q. And did you hear my question regarding the
25 payment terms between the City and the District when

1 an annexation of territory occurs?

2 A. Yes, sir.

3 Q. Is it your understanding that that provision
4 of the agreement at Page 4 provides for a single
5 payment upon annexation and not an annual continuing
6 obligation of the City?

7 A. Yes, that is our understanding.

8 Q. And that this payment would occur whenever
9 there is an annexation that the City desires to
10 provide water services to that area?

11 A. Yes.

12 Q. And -- but there is a provision to
13 recalculate that price at future dates should any
14 future annexations occur?

15 A. Yes.

16 JUDGE THORNBURG: Thank you.

17 That's all of the questions that the Bench
18 has.

19 Is there any redirect, Mr. Stewart?

20 MR. STEWART: No, your Honor.

21 JUDGE THORNBURG: Any cross-examination?

22 MR. SNODGRASS: None by Staff.

23 JUDGE THORNBURG: None by Staff.

24 Public Counsel?

25 MR. COFFMAN: No.

1 JUDGE THORNBURG: You may be excused.

2 (Witness excused.)

3 JUDGE THORNBURG: Mr. Snodgrass, do you have
4 any further statements or information to offer?

5 MR. SNODGRASS: Nothing, Judge.

6 JUDGE THORNBURG: Mr. Stewart?

7 MR. STEWART: Nothing, your Honor.

8 JUDGE THORNBURG: And Mr. Coffman?

9 MR. COFFMAN: No.

10 JUDGE THORNBURG: Okay. At this time we
11 will conclude the hearing, with the exception of the
12 late-filed exhibit that will be filed per the
13 agreement of the parties and the direction of the
14 Commission. The record will be closed with the
15 exception of that exhibit and any comments that the
16 Staff or Public Counsel would have to file with
17 respect to that.

18 And I thank you very much for being here
19 today.

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

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

	Marked	Received
Exhibit No. 1	3	17
Amended Joint Application for Approval of a Territorial Agreement		
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Appendix B, Case No. WO-2001-326, Description		
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Unanimous Stipulation and Agreement		