

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Public Hearing

April 28, 2005

Kirkwood, Missouri

Volume 1

In the Matter Of the Application of)
Missouri-American Water Company for the)
Approval of an Agreement with the City of)
Kirkwood, Missouri, to Construct Transmission) Case No. WO-2005-0286
Mains and Points of Delivery and to Sell and)
Deliver Water for Resale and Related Tariff)
Sheets.)

RONALD D. PRIDGIN, Presiding
REGULATORY LAW JUDGE

ROBERT M. CLAYTON III,
COMMISSIONER

REPORTED BY: Carol A. Green

FILED

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Missouri
Public Service Commission

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APPEARANCES:

The American Water Company was represented by Associate Corporate Counsel Mary G. Sullivan, 535 North New Ballas Road, St. Louis, Missouri 63141.

The State of Missouri, department of Economic Development, Office of the Public Counsel was represented by Senior Public Counsel Mike Dandino, PO Box 2230, Jefferson City, Missouri 65102.

The Missouri Public Service Commission was represented by Counsel Keith R. Krueger, PO Box 360, Jefferson City, Missouri 65101.

I N D E X

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

2 JUDGE PRIDGIN: The Missouri Public
3 Service Commission has set this time for a local pub-
4 lic hearing in Case No. WO-2005-0286, in which
5 Missouri American Water Company asks for Commission
6 approval for the resale agreement with the City of
7 Kirkwood.

8 The Commission regulates the rates
9 charged by investor-owned utility companies in
10 Missouri to ensure that those rates are just and reas-
11 onable. The Commission also regulates the quality of
12 service and safety of the operations of investor-owned
13 utilities.

14 The Commission is made up of five Commis-
15 sioners, one of whom is here today. The Commissioners
16 were appointed by the governor to fixed terms and con-
17 firmed by the Senate. The Commissioners also employ a
18 staff of engineers, accountants, attorneys, financial
19 analysts, and other specialists in the field of util-
20 ity regulation.

21 I am Ron Pridgin. I'm the Regulatory Law
22 Judge for the Missouri Public Service Commission, pre-
23 siding over today's hearing. With me today is
24 Commissioner Robert Clayton. This is an official
25 hearing, and the Commission, and statements and testi-

1 mony of witnesses will be recorded by the court re-
2 porter, and must be given under oath.

3 All of the Commissioners will have a
4 chance to read all of your remarks. The purpose of
5 this hearing is to hear from you on the subject of the
6 proposed contract. The company will not present
7 witnesses, and will not answer questions. This is
8 your chance to testify, and your remarks will be made
9 an official part of the record of this case.

10 I will call the name of each witness who
11 has signed up to speak. I will call you in the order
12 in which you signed. When your name is called, please
13 come forward to the witness lectern. I will ask you a
14 few preliminary questions, such as your name and your
15 address, and you can then make your statement to the
16 Commission. There may then be questions from the
17 Commissioner or from myself.

18 Please, do not leave the witness area
19 until you are excused. There may be someone who
20 wishes to testify, but for religious reasons cannot
21 take an oath. If that is the case, please let me know
22 when I ask you to be sworn, so I can ask you to affirm
23 your testimony instead.

24 Does anyone have any questions about the
25 procedure? Seeing none, we will begin the public

1 hearing on Case No. WO-2005-0286, in the matter of the
2 application of Missouri American Water Company for the
3 approval of an agreement with the City of Kirkwood,
4 Missouri to construct transmission mains and points of
5 deliverly, and to sell and deliver water for resale
6 and related tariff sheets.

7 I'd like Counsel to make entries of
8 appearance, please, beginning with staff.

9 MR. KRUEGER: Keith Robert Krueger for
10 the staff of Missouri Public Service Commission. My
11 address is: PO Box 360, Jefferson City, Missouri
12 65101.

13 JUDGE PRIDGIN: Mr. Krueger, thank you.
14 On behalf of Missouri American Water Company, please.

15 MS. SULLIVAN: Mary Sullivan, on behalf
16 of Missouri American Water. My address is: 535 North
17 New Ballas Road, St. Louis, Missouri 36141.

18 JUDGE PRIDGIN: Ms. Sullivan, thank you.
19 On behalf of the City of Kirkwood, please. No counsel
20 for the City. On behalf of the Office of the Public
21 Counsel, please.

22 MR. DANDINO: Michael Dandino, Office of
23 the Public Counsel. Post Office Box, 2230, Jefferson
24 City, Missouri 65102. Representing the office's of
25 the Public Counsel, and the public.

1 JUDGE PRIDGIN: Mr. Dandino, thank you.
2 I don't believe I have any other parties. Are there
3 any other Counsel to enter an appearance?

4 Seeing none, I will call the first
5 witness. I'm sorry. Is there anybody from the
6 Utility Worker's Union of America, Local 335? I don't
7 recall seeing anyone. All right. Thank you.

8 In that case let me go ahead and call the
9 first witness. I have first on the sign up list Ed R.
10 Ciarniello. I hope I pronounced your name correctly,
11 sir. If you would, please come forward to be sworn.

12 Would you raise your right hand, please,
13 sir. Do you swear the evidence you're about to give
14 will be the truth the whole truth and nothing but the
15 truth, so help you God?

16 THE WITNESS: I do.

17 JUDGE PRIDGIN: Thank you, sir. If you
18 would, please state your name for the record and spell
19 your last name for the court reporter.

20 THE WITNESS: Edmond R. Ciarniello,
21 C-i-a-r-n-i-e-l-l-o.

22 JUDGE PRIDGIN: Are you a customer of
23 Missouri American Water company?

24 THE WITNESS: Yes, I am.

25 JUDGE PRIDGIN: Are you a resident of

1 Kirkwood, Missouri?

2 THE WITNESS: Yes, I am.

3 JUDGE PRIDGIN: Do you have a statement
4 for the Commission, sir?

5 THE WITNESS: Yes, I do. Judge Pridgin,
6 and Commissioner Clayton, thank you for the opportu-
7 nity to address the hearing. Initially, I filed for
8 intervention through the process, and that request was
9 denied and basically you saved me a trip to Jefferson
10 City. I'm very appreciative of the opportunity to
11 make these statements today, and to have so many
12 people come here. I'd also like to thank the City
13 people and Office of Public Counsel, and the people
14 from Missouri American Water.

15 On the issue of the contracts that are
16 before the Commission. On the research that I've done
17 I think Missouri American Water is a very good com-
18 pany, and I think they service St. Louis County very
19 well. If they are -- eventually are the solution for
20 Kirkwood water, I have no doubt that they will do that
21 also for the city.

22 The contract that the Commission is going
23 to rule on in the coming weeks or months is a two
24 party contract between the City of Kirkwood and
25 between Missouri American Water, a private company.

1 The City of Kirkwood has certain procedures to enter
2 into this contract that I find were not followed.
3 I'll take them in the order of, first, our City
4 Charter in Kirkwood, secondly would be the State
5 Constitution, and thirdly, the Revised Statutes of
6 Missouri.

7 Chapter 6 of the City Charter requires
8 that the City Administrator would present four months
9 prior to budget approval, a three year plan for capi-
10 tal improvement. To my knowledge, this has not been
11 done. That plan should specify details; the drawings,
12 the cost, and most importantly, the method of paying
13 for it.

14 Mr. Brown is president today, he's the
15 Chief Administrative Officer. The most recent corres-
16 pondence that I have from him is dated April 7. He
17 was responding to my question, "How is the City going
18 to pay the advertised 6.1 million dollars for the
19 construction of these water mains?"

20 Mr. Brown indicated in his letter that
21 they were going to borrow the money from the Missouri
22 Fund, and we'd get -- I'm paraphrasing his letter --
23 we would get a beneficial interest rate. The key
24 message of this letter, and again, it was dated April
25 7 is that:

1 1. The financing for this project is not
2 in place.

3 2. They're going to borrow the money.

4 3. The public has never seen the cost of
5 this project.

6 The contract that's before you is for 1.9
7 million dollars. But it's a little bit like pouring
8 concrete for the new runway for the airport, once you
9 start you can't stop. The remainder of the 6 million
10 dollars would follow in other enabled ordinances after
11 this first contract is approved. It starts the
12 project. It makes no sense to start a public works
13 project and not complete it.

14 Our Charter calls for public hearings. I
15 have a copy of the Charter here. I don't want to bore
16 the Commission and recite from it, but in the
17 Preamble, and in the Charter Commission, "public
18 participation is a principle of local government in
19 Kirkwood, Missouri."

20 For the Council to have acted as it did
21 on December 2nd, and pass an ordinance which enabled
22 the City of Kirkwood to enter into a contract with
23 Missouri American Water, and not have held the re-
24 quired public hearings for a capital improvement
25 project is, simply, a bad example of local government.

1 I don't understand how they missed that. In short,
2 I'd say we have a local government that's out of
3 control.

4 What are the controls? They are, number
5 one, Article 6 of our Charter. Again, it's the local
6 public government article of the constitution, that's
7 Article 6.

8 Article 6 requires, and I believe it's
9 Section 26, a public vote. A majority vote of the
10 voters, voting on a question to enter into a debt, a
11 public debt for construction of water services for a
12 municipality. We haven't done that. I think the City
13 of Kirkwood would be on far sounder ground in this
14 contract had this been put before the people.

15 Moving onto the Revised Statutes of
16 Missouri. Chapter 88 describes the prescriptions for
17 water contracts, municipal water contracts, and
18 Section .251 would -- that's Chapter 88, Section .251
19 -- does require the City to post 30 days prior to any
20 enabling legislation, which in this case it was the
21 December 2nd ordinance. They're required to post that
22 for public view. That's a very important control,
23 public participation opportunity, which was bypassed.

24 Chapter 88, Section .630 very specific-
25 ally requires a majority of the voters voting on the

1 question to approve any contract from municipal water
2 services. Once before this Commission, is very surely
3 a contract for municipal water services -- water sup-
4 ply for this City -- I assume for the rest of time, or
5 until it changes by ordinance. In that Chapter 88.630
6 it specifies a contract may not be for a period of
7 more than 20 years. It has to be reviewed every 20
8 years, and if it's renewed that renewal also is sub-
9 ject to approval of the majority of the voters in the
10 municipality impacted.

11 I have tried as best I can to interrogate,
12 through my writing, the city officials. Everybody, I
13 believe, with the exception the Claire Butts -- I
14 believe that everybody I have corresponded with has
15 been very helpful, and have always answered my
16 correspondence.

17 But there is so much that's missing here,
18 that if I were to have a vote as a citizen on this
19 water contract, I would have to vote it down. And
20 that's why I'm here recommending to this Commission
21 that this Commission vote this contract down. It has
22 not been laundered through the public, here in
23 Kirkwood. I know I'm standing here alone, and prob-
24 ably responsible for this hearing taking place today,
25 but I think there is lot of interest, the timing of

1 this meeting was such that there's a number of people
2 that just couldn't make the schedule. The notice for
3 many people was less than two days.

4 The City has a lot of work to do as far
5 as selling to the public, this contract. Showing us
6 the necessity for it, showing us the need for it. I
7 am not saying what they did was a wrong thing for the
8 City. There is an awful lot of detail here. I'm
9 saying that the procedure they have used is the wrong
10 way to go about doing business in this City. You have
11 to include the public. I know we have a mayor and
12 city council and a city government that prides itself
13 in public participation.

14 I don't know if it's possible to go back
15 at this time, since the contract is signed and the
16 ordinance passed, and retool this. But if this
17 Commission turns down this contract that opportunity
18 exists. The CH2M Hill Report is approximately 300
19 pages. The enabling ordinance is based on that
20 report. I read that report. I read it in
21 Mr. Reichert's office.

22 Everybody in the City is always very
23 helpful. This is a nice community, I think we have all
24 nice people, I think we have a nice government. The
25 door has been open for me to gather any information

1 I've wanted. Basically, I don't like the information
2 I've seen. I can't find lasting value to what's being
3 done for this community in terms of our water supply.

4 The ordinance is based on a consultant
5 report called the CH2M Hill Report. Spelled just like
6 it sounds. In that report our water plant is valued
7 at 6 to 8 million dollars. There is absolutely no
8 word of what we are going to do with that water plant.
9 If that's the current value of that asset, it should
10 be accounted for.

11 We know this, only through the
12 Webster-Kirkwood Times articles that they are going to
13 abandon it. I don't know that it serves the City well
14 to abandon that water plant. I've lived in other com-
15 munities where I've seen something like this happen
16 before. They'll abandon a plant, it then goes from a
17 value currently estimated at 6 to 8 million dollars to
18 a value of zero. At some time, after all the water
19 mains are in place and paid for, that plant is then
20 sold for a nickel on the dollar, and it goes back into
21 the process of producing water for the community. I'm
22 not suggesting that's what's happening here, but I
23 think the community deserves to know what's going to
24 take place with the source of water that we're all
25 drinking today, and has served us well for 80 years.

1 It may be necessary to shut that plant down, I don't
2 know.

3 On the subject of shutting down the plant,
4 which the contract, if you approve it, has that im-
5 pact. It shuts down an 80 year source of water. Part
6 of the Public Service Commission has something to do
7 with homeland securities, it's on your web site. You
8 have to be concerned because of bio-terrorism, about
9 issues of public safety and in the drinking water, and
10 other very necessary utility infrastructures.

11 The closing of our plant has not been
12 reviewed by the State Geologists, that's the depart-
13 ment created to assess water resources in the State.
14 It has not been reviewed by FEMA, Federal Emergency
15 Management Association. It has not been reviewed by
16 the new department, Homeland Security, and it's not
17 been reviewed by the Missouri Department of Natural
18 Resources.

19 Again, I'm not saying the City hasn't
20 done what's in the best interest, but I cannot find
21 evidence that what they've decided to do has been
22 properly vetted. First of all, in the community, and
23 then through other agencies that impacted it. It just
24 seems to me, since this is a worthy source of water,
25 we have used it for 80 years, to abandon it without

1 just cause is to give up some source independence that
2 we people that live in Kirkwood have.

3 I don't know what the future holds for us
4 right now, and today certainly as an example, the wat-
5 er tables are high. For the last five years we've had
6 plenty of rainfall, we've had more flood problems than
7 we do water problems. But if you read our City codes,
8 and the St. Louis County codes, there are procedures
9 in place for drought. Droughts are always more de-
10 structive than floods. Droughts -- They don't really
11 declare a major drought until we've had three years of
12 abnormally low rainfall. The City of Kirkwood right
13 now, with its own water source, controls its own fate
14 in a drought. I know the water tables are high, and
15 we probably have roads that closed today because of
16 high water. But who can predict where we're going to
17 be in 5 years, 10 years, 20 years.

18 The decision that's made by the
19 Commission approving that contract shuts down a water
20 plant. That may be fair game. I just think there's a
21 lot more public administration experts that need to
22 take a look at it, and sign off on it. We didn't do
23 that here in Kirkwood. The opportunity to speak as I
24 am speaking today has never existed. It would have
25 existed had we followed our Charter and had a public

1 hearing. What I would like to see, and I know I have
2 the ear of all the administrators from the City. As a
3 person and the public, I want to see a planned view of
4 the City. I want to see the existing water mains
5 drawn in blue. I want to see the proposed water mains
6 drawn in red. I want to see where these points of
7 entry, and they're all in the contract, they're at-
8 tached in six individual maps that show where these
9 metering boxes are going to go. But we don't get to
10 see the overall plan.

11 As a last portion of my testimony here;
12 addressing the three contracts that are on the table
13 that this Commission has to look at, and make some
14 decision about. The first contract is for employment.
15 To employ the municipal workers from our water plant
16 that is going to be abandoned.

17 I can't help but think that those costs
18 are somehow transmitted to the public here in
19 Kirkwood, by additions to their water bills. I don't
20 know whether that's fair or whether it's unfair. I
21 know in the private sector when we shutdown a plant
22 there's always a dividend taken by the reduction of
23 salary. In this case we are shutting down a water
24 plant, a municipally owned water plant, and there is
25 going to be no dividend in the shutdown.

1 I know the people that work there are
2 good people, they have served us well, they have pro-
3 vided us safe and clean drinking water. I've only
4 lived here 19 years, but I have no complaint with the
5 water whatsoever. As a matter of fact, I prefer the
6 water. I don't know if the water from the Missouri
7 River is going to taste any different, or have any
8 different characteristics, but I'm not really aware of
9 anybody in Kirkwood that has a problem with the water
10 supply we've had.

11 The cost of these employees and the en-
12 tire City water division has to be costed-in to our
13 monthly water rate. We have a city that's economic-
14 ally challenged right now. They're talking about
15 laying off 20 people, but they're preserving all the
16 jobs at the water system.

17 Now, I like Mr. Reichert, I like his
18 secretary, Katie. And I'm sure his whole department
19 from top down emulates him. You couldn't ask for a
20 better, more dedicated City employee. But if we're
21 going to shutdown the water division, and retain all
22 of the people working there, there can never be a
23 dividend.

24 We're going to buy water from Missouri
25 American Water. We're going to continue to fund all

1 the personal costs of our city water system, which
2 could be about two-thirds of it. The total city water
3 system from the last audit, I think is 3.35 million
4 dollars a year for personnel and equipment costs, and
5 the total revenue is about 3.7 million dollars a year.

6 From a business standpoint, here is an
7 enterprise -- and the mayor describes it as an enter-
8 prise fund business -- that has a net annual earnings
9 of 350 thousand. Now, we're going to invest 6 million
10 dollars in a venture that has a net earnings of 350
11 thousand. These contracts also call for cost over-
12 runs, which I'm sure given inclement weather trying to
13 put these water mains in, they will be experienced.

14 We have unknown factors of cost of bor-
15 rowing the money to pay for the mains. How many years
16 is it going to take for this City to pay it off via
17 additions to our water bills, the 6.2 million, plus
18 cost overrun, plus interest on the financing? Is that
19 a wise business decision? Myself, I run an electron-
20 ics distribution system, but I can't imagine that in a
21 business that would have a net earnings of 350
22 thousand, that I would invest 6 million dollars in
23 that one division, or that one business. I just don't
24 think it's justified. These are the types of things
25 which need to be vetted in the community, and I under-

1 stand, Judge Pridgin, that they're not particularly
2 the issues that are before the Commission.

3 To recap, what the Commission really
4 needs to take a hard look at, is has the City of
5 Kirkwood as one party to this contract, brought you an
6 authorized contract? Has the City of Kirkwood entered
7 into this contract with the proper authorization?

- 8 1. Under their Charter.
- 9 2. Under the Constitution. And,
- 10 3. Under the Missouri Revised Statutes.

11 I studied all three of those bodies of
12 law, assuming I would find a positive answer, I did
13 not. There are things that I think need to be ad-
14 dressed in our community. Our water plant is aging,
15 we have to do something with it. It's certainly the
16 position of the town fathers and people that run the
17 City to look out for those interests. But we need an
18 awful lot of information, and we need to involve the
19 public.

20 This contract, the three contracts that
21 are before the Commission, would be a lot more san-
22 guine if there was a certificate that they have passed
23 muster at an election connected with it. There is no
24 such certificate. I think the Commission has to look
25 very carefully at the enabling ordinance, and how that

1 came about. All the sections of law that were by-
2 passed, the protections, and the checks and balances
3 of public hearings. I don't think it speaks well for
4 how the local government handled this issue. In some
5 regard that does come to this Commission.

6 Now, I'm very impressed with the formal-
7 ity of this Commission. When I was rejected to speak
8 in Jefferson City they cited several paragraphs of the
9 Code of State Regulations, which said that my interest
10 is no different than any one else's interest in the
11 City, and that's true. For that reason I was not
12 invited to Jefferson City.

13 Again, I'm delighted to have the oppor-
14 tunity to say here, -- and I am about to conclude --
15 everything I would have said in Jefferson City. The
16 strict following of those Code of State regulations is
17 something that, what I see the Commission doing is
18 doing things properly, and doing things by the book.
19 If that is the practice of the Commission I applaud
20 you, and I encourage you to keep doing that.

21 That's the reason I say take a very close
22 look at the City Ordinance and City contract and ask,
23 Did the City of Kirkwood enter into this contract with
24 authorization. There were questions that I found in
25 my study that make me come, with what information is

1 available to me, to the conclusion that they have not.
2 I have concluded. Are there any questions?

3 JUDGE PRIDGIN: Thank you. Do you have
4 any questions, Commissioner Clayton?

5 COMMISSIONER CLAYTON: Yes. Mr.
6 Ciarniello, I want to ask you a couple questions if
7 that's all right, because you said a lot here today
8 and my notes are not very organized. First of all, I
9 want to ask you, if you could repeat for me the sec-
10 tions in the City Charter, the Missouri Constitution,
11 and the Missouri Statutes that you were citing. I got
12 confused, you went from a Chapter 6 to Article 6, and
13 that may be the case. If you could start with the
14 City Charter, you made reference to, I think, chapter
15 6?

16 THE WITNESS: Yes. It's Article 6,
17 Financial Procedures. Article 6 of the Kirkwood City
18 Charter, Section 6.4, Capital Program. Submission to
19 Council. The Chief Administrating Officer shall
20 prepare, and submit to the Council, a capital program
21 for the minimum of three years at least four months
22 prior to the final date for submission of the budget.
23 Program requirements -- and it goes on. But one of
24 the requirements is a notice of public hearing.

25 COMMISSIONER CLAYTON: 6.4 is the

1 Section?

2 THE WITNESS: Yes.

3 COMMISSIONER CLAYTON: Any other Sections
4 in the City Charter?

5 THE WITNESS: They are all in Chapter 6
6 under Financial Procedure. And thanks for asking,
7 there's only one more I'd like to point out, and that
8 would be obligations. The City under Section 6.9
9 small letter B as in bravo, then letter I. It says
10 that, no ordinance undertaking any obligation to pay
11 funds may be finally improved, until the City employee
12 so designated by ordinance, certifies that sufficient
13 funds have been appropriated, or are appropriated by
14 such ordinance to satisfy such obligation.

15 Well, if I understand Mr. Brown's letter
16 from April 7, and I have his letter here. The City
17 has not secured funding, the City has not secured the
18 bond or the debt vehicle where they're going to pay
19 for this contract with Missouri American Water.

20 COMMISSIONER CLAYTON: Any other section
21 in the City Charter?

22 THE WITNESS: No.

23 COMMISSIONER CLAYTON: Let's go to the
24 Missouri Constitution. Did you make a specific refer-
25 ence to the Constitution? That's some nice, light,

1 easy reading.

2 THE WITNESS: Well, let's see. In the
3 Missouri Constitution I referred to Chapter 88, Section
4 88 --

5 COMMISSIONER CLAYTON: I have that
6 written down as the Statute. Chapter 88, Section 251
7 and Section 630 in the Statute. I don't think there's
8 a Chapter 88 in the Constitution.

9 THE WITNESS: No, there's not and your
10 absolutely correct. I was wrong.

11 COMMISSIONER CLAYTON: I read the
12 Constitution on the weekends when I get a chance. It's
13 kind of a hobby.

14 THE WITNESS: Let me see if I can bring
15 that up, and I have. It's Article, 6 Local Government.
16 I believe it's Section 26-E, as in echo. Additional
17 indebtedness of cities for municipally owned water and
18 light plants dash dash limitations. Any city by vote
19 of the qualified electors therefore voting thereon may
20 incur an indebtedness not to exceed an additional 10
21 percent of the value of the taxable tangible property
22 shown as provided by section 26-B for the purpose of
23 paying all or any part of the cost of purchasing or
24 constructing water works or electric or other light
25 plants to be owned exclusively by the City. Article 6,

1 Section 26-E. I'm not an attorney. It's my
2 interpretation that, to enter into this indebtedness as
3 Mr. Brown has indicated, that we are entering into an
4 indebtedness, that the Constitution would require the
5 City of Kirkwood, which is a Charter City to have a
6 majority of the voters vote on the question. I don't
7 believe that's taken place.

8 COMMISSIONER CLAYTON: Article 6, Section
9 26-E. Are there any other sections, or is that the
10 only Section in the constitution?

11 THE WITNESS: In this Section 26, I would
12 also cite Section 26-B and 26-C. They're all sections
13 which talk about indebtedness for local governments
14 and they all require consistently, the majority vote
15 of the voters of the municipality voting on the
16 question.

17 COMMISSIONER CLAYTON: Missouri Statutes.
18 I wrote down Section 88.251 and 88.630. Are there any
19 other State Statutes that we should be aware of in
20 your opinion?

21 THE WITNESS: I believe in the Revised
22 Statutes of Missouri Chapter 77.100. It lays out the
23 general prescription that a local government will
24 follow all constitutional provisions and all existing
25 statutes. Kirkwood was a Charter City from 1930

1 until, I believe, 1984. In that year -- we were a
2 third-class City -- in 1984 we became a Charter City
3 and we passed this Charter. I don't know what takes
4 precedence here as far as, I'm going to use the term,
5 chopping this three to the public. Whether it's our
6 local Charter, whether it's the Constitution, or
7 whether it's the Revised statutes. But all three
8 bodies of law, when I read them would require this
9 City to come to its people and ask a question, and
10 have us approve that question.

11 COMMISSIONER CLAYTON: Okay. I have a
12 couple more questions, if you'll bear with me. First
13 of all, are you aware, regarding Homeland Security,
14 are you aware of any Section either Federal or State
15 law that would require a Homeland Security review or
16 analysis prior to the Commission considering this
17 request?

18 THE WITNESS: No, I am not. I am basic-
19 ally, thinking regionally. Why I am saying we are
20 taking what has been a viable source of water and
21 abandoning it. That may be fair. I do not have the
22 information to make that decision, and I'll except
23 anything that the town leaders would say the data
24 shows us to do this.

25 The CH2M Hill Report did not address the

1 viability of the source of water, which is off
2 Marshall Road here in Kirkwood, that has supplied us
3 with water or a portion of it, 80 percent of it.
4 Mr. Reichert indicated that in a question and answer
5 period. I'm not aware that it would have to be re-
6 viewed by Homeland Security, I only mention it because
7 I think in the age of bio-terrorism I just think it's
8 one of those things you check off. It's like when
9 you buy a home, you need a flood letter, you need a
10 termite inspection. It wouldn't keep you from wanting
11 the home or wanting to buy it, but those are details.
12 They're worth looking at. I think they're details
13 worth looking at, and that's only looking at it with a
14 regional mindedness. I think it's something that
15 could have been filtered through the east/west Gateway
16 Coordinating Counsel. And said, Here in Kirkwood
17 we're going to shut down our water plant, is everybody
18 onboard with that, does that make sense to you?

19 Somewhere in the east/west Gateway
20 Coordinating Counsel there was somebody that reports
21 to FEMA and reports to Homeland security, and that
22 tracks these things. And I know there's such a person
23 because the job was advertised in the local news-
24 papers. This is since the changes, since the terrible
25 terrorist attacks of 2001. But they have created an

1 office to take a look at that. Commissioner, does
2 that answer your question on Homeland Security?

3 COMMISSIONER CLAYTON; I think the answer
4 to the question was, no. That you were not aware of a
5 statute that requires --

6 THE WITNESS: That's correct. I am not
7 aware of any statute that requires Homeland Security to
8 approve the contract.

9 COMMISSIONER CLAYTON: Are you aware of
10 any statute, federal or state law that would require
11 State geology approval, that would require that study?

12 THE WITNESS: No, sir.

13 COMMISSIONER CLAYTON: I know that these
14 things are permissive, that it never hurts to have
15 more reports and more studies. But I wanted to know
16 if there were certain mandates that may be required on
17 this that I'm not aware of.

18 THE WITNESS: Not that I have discovered.
19 And in reading the Statutes and the Constitution I
20 came across the establishment of the Office of the
21 State Geologist, which has been around since 1915.
22 And the State geologist exists for, and has the sole
23 responsibility of cataloging and assessing the States
24 water resources. No requirement, but there is a State
25 agency that tracks these things, and I think it's

1 worth chopping it through them.

2 COMMISSIONER CLAYTON: I understand. You
3 said that you had requested to see maps where the
4 lines would actually go, and you were denied that in-
5 formation?

6 THE WITNESS: That's incorrect. I'm
7 sorry I left that impression. That's unfair to the
8 City. The City, again, has been very helpful in all
9 my requests.

10 What I would like to see, and this is
11 just speaking didactically. What I would like to see
12 is a member of this community in a public hearing with
13 a planned view of the City with the current water
14 mains drawn in blue, and the proposed water mains
15 drawn in red.

16 COMMISSIONER CLAYTON: Have you seen a
17 map where the proposed water mains are supposed to be,
18 the new ones?

19 THE WITNESS: No. There are maps
20 attached to the contract, but they're in these eight
21 and-a-half by eleven inch pages and they are germane
22 just to the local neighborhoods.

23 COMMISSIONER CLAYTON: It's not a full-
24 scale city map?

25 THE WITNESS: No. My concern in saying

1 that, is because these water mains, if you read the
2 contract, -- and the contract is the business of the
3 Commission -- these water mains also will be used to
4 serve other communities. I would like to know how
5 many feet or miles of these water mains actually lie
6 within our incorporated boundaries. I can't really
7 see that from the maps. I think that's something a
8 public hearing --

9 COMMISSIONER CLAYTON: Have you asked
10 that of the City, that specific question?

11 THE WITNESS: No, I have not.

12 COMMISSIONER CLAYTON: Are you aware of
13 what the rates impact will be before and after this
14 contract, do you have a --

15 THE WITNESS: No, Commissioner Clayton, I
16 am not. And I have indicated to the City in a letter
17 that, that was one shortcoming. I have not made a
18 specific request for the rates. I just thought that
19 was something we should be given. I know the
20 Commission is looking at a contract with Wholesale
21 Water Supply, and I know the Commission as no
22 jurisdiction over the municipal government of
23 Kirkwood. What Kirkwood is going to do with those
24 rates is a question mark.

25 Now, I'm assuming, and again, I'm not an

1 attorney, the reason the Public Service Commission
2 does not have any jurisdiction over a municipally
3 owned water supply is because we have the popular
4 protection of right of vote. And because this ord-
5 inance puts everything in process, this contract, and
6 as soon as the Commission okays the contract our
7 rates go up, and they're adjusted. I'm not saying the
8 City would do this capriciously, but there is abso-
9 lutely no public review or control of what those rates
10 are.

11 The PSC controls the wholesale rate for
12 water that's going to be sold to the City, and that's
13 well and fair. And I'm sure we'll be treated fairly.
14 The City has to cover a number of things, the con-
15 struction of the water mains, the construction of the
16 six metering points, the interest on the indebtedness
17 and any cost overruns. So we are simply at the mercy
18 of whatever the dollars add up to be, divided by the
19 number of residential households, which are 9,375. 6
20 million dollars is a lot of money to spend.

21 I would want to take a look at, if we
22 spent 6 million dollars on our water plant, on the
23 membrane filtration system, that most of the CH2M Hill
24 Report was about, is that a better way to spend our
25 money and maintain our traditional source of water.

1 Call our own shots during drought and set our own
2 rates through our local representation of City
3 Council. And thank you for bringing this point up.

4 What's taking place here, is we have a
5 quasi-public and a quasi-private organization being
6 formed by these contracts that are going to supply
7 water to the City. Again, I don't have the answer,
8 but I would say this; as one person in Kirkwood, I
9 would rather have 100 percent Missouri American Water,
10 because they're a good company. They're an excellent
11 managed civil engineering company. Or, 100 percent
12 municipal water, because the City of Kirkwood has
13 taken care of it for 80 years, and they could continue
14 to do this.

15 If you read these contracts we get this
16 hybrid organization that's going to be bringing water
17 to this City and it appears to me -- and again, I
18 haven't seen the cost -- but it appears to me, this is
19 the most expensive way to do it for the rate pay. You
20 couldn't find a more expensive way to deliver 100
21 cubic feet of water to each of those 9000 residential
22 households. There's just an inefficiency. There's a
23 duplication between Missouri American Water, and re-
24 taining the entire water division in the municipal
25 government organization treaty and it's cost, and

1 we're making this, I call it the hybrid organization.
2 It is a hybrid organization and that's what these
3 contracts developed for this City, forever, if the
4 Commission approves them. I just think it needs to be
5 laundered to the voters here in Kirkwood.

6 I think the City Council and City
7 Administration can sell this, but they haven't sold
8 it. The issues of the three bodies of law, I'm not an
9 attorney, but I would say that those will probably
10 after today, get some great scrutiny and find out
11 whether the Commission can move forward, just based on
12 body of law.

13 COMMISSIONER CLAYTON: I will just offer
14 that the initial part of your comments regarding --
15 This is kind of a funny area for the Commission to be
16 part of, because we do have an investor on the utility
17 and we also have a municipality. I think you're cor-
18 rect, as you stated some theory in government that the
19 accountability goes back to the city government, and
20 I'm not sure exactly what the standard is in this
21 case. But I will say this, I appreciate you coming
22 here today and providing us information. We generally
23 do not grant intervention cases just to individuals.
24 Because of case management, it would be very diffi-
25 cult.

1 I would offer to you, the Office of
2 Public Counsel was here today, Mr. Dandino, are
3 usually very responsive to members of the public, and
4 I would urge you to stay in communication with their
5 office. They're usually pretty good about passing out
6 information and knowing what's going on with the
7 hearing process. I would also urge you to -- With a
8 number of the questions that you've raised today, that
9 you communicate those questions either to the City or
10 the company. Perhaps write them down and pose those
11 questions, because usually those questions you can get
12 at least some answer. It may not be the answer you're
13 hoping for, but I could urge you to keep lines of
14 communication open in that with regard. Other than
15 that I don't think I have any further questions. I
16 thank you for coming today.

17 JUDGE PRIDGIN: I don't have any questions
18 for you, sir. Thank you so much for your time and
19 testimony.

20 THE WITNESS: Thank you.

21 JUDGE PRIDGIN: I see as the next witness,
22 Linda Fenton, if I'm reading that name correctly

23 SPEAKER: I just thought that was an
24 attendance sheet.

25 JUDGE PRIDGIN: I'm sorry. You don't wish

1 to testify; is that correct?

2 SPEAKER: Correct.

3 JUDGE PRIDGIN: There are no other
4 witnesses signed up to testify. Does anyone else wish
5 to testify? Seeing none, let me see if we have
6 anything else from the Commission before we conclude.
7 Commissioner Clayton, any further comments?

8 COMMISSIONER CLAYTON: I just want to say
9 thank you, to everyone that came out today. I know we
10 have a lot of Missouri American Water officials that
11 are here today. I always appreciate seeing the util-
12 ity have a good support team to answer any questions,
13 in the event consumers have questions. I also apprec-
14 iate the representation by the City here today. It's
15 important that they make themselves available as well.
16 Of course, the public, this was for you. And we're
17 happy to come here, the PSC, service is our middle
18 name. I can ensure you that the transcript, the
19 record, will be reviewed by the other Commissioners,
20 they take this very seriously. Thank you very much
21 for coming.

22 JUDGE PRIDGIN: Anything else from
23 Counsel? Seeing nothing, that will conclude the local
24 public hearing in WO-2005-0286. We are off the
25 record.