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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

January 27, 2003

Jefferson City, Missouri

Volume 2

In the Matter of the Joint Application)
of the City of Union, Missouri, and)
Public Water Supply District No. 1 of) Case No.
Franklin County, Missouri, for Approval) WO-2003-0186
of a Territorial Agreement Concerning)
Territory in Franklin County, Missouri.)

BEFORE:

KENNARD L. JONES,
REGULATORY LAW JUDGE.
SHEILA LUMPE,
COMMISSIONER.

REPORTED BY:
TRACY L. CAVE, CSR, CCR
ASSOCIATED COURT REPORTERS

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A P P E A R A N C E S

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1 JUDGE JONES: This is Case No. WO-2003-0186 in
2 the matter of the joint application of the City of Union,
3 Missouri and Public Water Supply District No. 1 of Franklin
4 County, Missouri for approval of a territorial agreement
5 concerning territory in Franklin County, Missouri.

6 Present are Charles Brent Stewart, attorney
7 for City of Union and Public Water Supply District No. 1 in
8 Franklin County. Also present is Victoria Kizito, Staff of
9 the Missouri Public Service Commission and M. Ruth O'Neill,
10 attorney for the Office of Public Counsel.

11 Does anyone have any opening statements?

12 Ms. Kizito, you have one witness. Do you have
13 an opening statement you'd like to make?

14 MS. KIZITO: No, I don't your Honor.

15 JUDGE JONES: Mr. Stewart or Ms. O'Neill, do
16 either of you have opening statements?

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

18 MR. STEWART: Judge, if I might, just very
19 briefly. This case is simply a -- one of a series of cases
20 that this Commission has seen in recent years as a result of
21 some legislation passed in I believe 1991 that allows those
22 that supply water service, whether they're regulated or not
23 by the Commission, to come before the Commission and agree
24 upon service area boundaries for their respective companies.

25 This particular filing involves the City of

1 Union and a water district of Franklin County, District
2 No. 1 who got into -- as is not uncommon, got into a dispute
3 over service to two particular subdivisions in their service
4 territories.

5 The result, rather than lawsuits, has been for
6 the parties to agree among themselves on how to resolve that
7 matter. There are no customers currently being served by
8 one entity that would be served by the other entity and, in
9 fact, the customers in question have been at all times and
10 continue to be served by the City of Union and as a result
11 of Commission approval of this agreement, would continue to
12 be served by the City of Union.

13 It's simply another case of where the parties
14 have resolved their differences and due to the anti-trust
15 provisions and the statutes of the State of Missouri have
16 come before the Commission and are requesting that the
17 Commission review and hopefully approve the territorial
18 agreement as being not detrimental to the public interest.

19 JUDGE JONES: Okay. Thank you, Mr. Stewart.

20 Ms. Kizito, you mentioned prior to going on
21 record that you have exhibits that you would like to submit.
22 Perhaps we should take care of those. Did you have a
23 preference of when you wanted to submit them?

24 MS. KIZITO: It doesn't matter to me. I can
25 submit them now.

1 JUDGE JONES: Let's get that out of the way.

2 MS. KIZITO: I have three exhibits.

3 MR. STEWART: Judge, if I might, just for the
4 record, I just wanted to mention that I have with me
5 today -- although they're not planning on being called as
6 witnesses, I do have representatives from the district and
7 from the City. From the City, Mr. John Hobson and from the
8 District, Mary Voss, and they're here with me today.

9 JUDGE JONES: Thank you, Mr. Stewart.

10 (EXHIBIT NOS. 1, 2 AND 3 WERE MARKED FOR
11 IDENTIFICATION.)

12 JUDGE JONES: Okay. Ms. Kizito, you may go
13 forward.

14 MS. KIZITO: Good morning, your Honor,
15 Commissioner. I'd like to call my first and only witness,
16 Dale Johansen.

17 (Witness sworn.)

18 JUDGE JONES: You may be seated.

19 DALE JOHANSEN testified as follows:

20 DIRECT EXAMINATION BY MS. KIZITO:

21 Q. Please state your name and business address
22 for the record.

23 A. My name is Dale Johansen. My business mailing
24 address is Post Office Box 360, Jefferson City, Missouri
25 65102.

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

2 A. I work for the Missouri Public Service
3 Commission and I am the manager of the water and sewer
4 department in the utility operations division.

5 Q. And how long have you worked for the
6 Commission?

7 A. I've worked for the Commission for a total of
8 nearly 20 1/2 years. And I've been in my current position
9 for just over 7 1/2 years.

10 Q. Have you previously testified in cases before
11 this Commission?

12 A. Yes, I have. I've testified in numerous cases
13 before the Commission, including nine other cases involving
14 applications for Commission approval of water service
15 territorial agreements.

16 Q. Mr. Johansen, I'm going to hand to you what
17 has previously been marked as Exhibits No.1 and No. 2.
18 Could you please identify those?

19 A. Yes, ma'am. Exhibit 1 is a copy of the joint
20 application for approval of the water service territorial
21 agreement with Public Water Supply District No. 1 of
22 Franklin County and the City of Union filed with the
23 Commission on November 19th, 2002.

24 Then attached to that joint application as
25 Appendix A is a copy of the territorial agreement between

1 the district and the cities, which those two entities
2 entered into on October 21st, 2002.

3 And then also attached to the territorial
4 agreement as Exhibits A and B are two documents containing
5 the legal description of the territory that is the subject
6 of the agreement.

7 And then Exhibit 2 is a substitute for
8 Exhibit A to the agreement which the parties recently filed
9 in this case on January 14th.

10 Q. In your capacity as manager of the
11 Commission's water and sewer department, have you had an
12 opportunity to review the joint application, the territorial
13 agreement and the attachments to those documents?

14 A. Yes, I have.

15 Q. Did anyone else from the Staff participate in
16 the review of the application and the territorial agreement
17 and the attachments?

18 A. Yes. Jim Merciel, who also works in the water
19 and sewer department, was also involved in our review of
20 those documents.

21 Q. Please briefly describe your and Mr. Merciel's
22 reviews of these documents.

23 A. First, I conducted a general review of the
24 provisions of the application, the agreement and the
25 attachments.

1 Second, I compared the provisions of all of
2 those documents to the statutory requirements that pertain
3 to water service territorial agreements.

4 Third, I compared the provisions of those
5 documents to the requirements of the Commission's rules that
6 pertain to applications for review and approval -- excuse
7 me -- review and approval of water service territorial
8 agreements. Additionally, Mr. Merciel conducted a detailed
9 review of the legal descriptions of the territory that is
10 the subject of the agreement.

11 Q. Did you or Mr. Merciel notice anything out of
12 the ordinary during your reviews of those documents?

13 A. Nothing serious. However, Mr. Merciel did
14 raise some questions about the legal description that was
15 included as Exhibit A to the agreement.

16 Q. Did the parties to the territorial agreement
17 make any modifications to the documents that they have filed
18 in this case as a result of the two items -- I'm sorry -- as
19 a result of what you mentioned?

20 A. Yes, they did. As I mentioned earlier, on
21 January 14th, the parties to the territorial agreement filed
22 a substitute for Exhibit A to the agreement which did
23 include some changes to the legal description of the
24 territory that is set out on that document.

25 Q. Regarding the statutory requirements that

1 pertain to water service territorial agreements, where are
2 those found?

3 A. They are found in Chapter 247, Section 172 of
4 the Revised Statutes of Missouri.

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

7 A. Certainly. First, the territorial agreement
8 must specifically designate the boundaries of the water
9 service areas of each water service provider subject to the
10 agreement.

11 Second, the agreement must specify the powers
12 granted by the entities subject to the agreement to operate
13 within one another's corporate boundaries.

14 Third, the Commission's approval of a
15 territorial agreement shall in no way affect or diminish the
16 rights and duties of any water supplier that is not a party
17 to the agreement to provide service within the boundaries
18 designated in the agreement.

19 And fourth, Commission approval of a
20 territorial agreement may come only after an evidentiary
21 hearing is held and after the Commission determines that
22 approval of the agreement is not detrimental to the public
23 interest.

24 Q. Regarding the Commission rules that pertain to
25 water service territorial agreement, where are those found?

1 A. Those rules are found in 4 CSR 240-2.060 and
2 4 CSR 240-51.010.

3 Q. And what are the subjects of those rules?

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

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

13 Q. Regarding the statutory requirements that you
14 previously mentioned, is it your opinion that the joint
15 application and the territorial agreements satisfy those
16 requirements?

17 A. Based upon my and Mr. Merciel's reviews of the
18 joint application, the agreement and the attachment to those
19 documents, it is my opinion that the statutory requirements
20 have been satisfied for the following reasons.

21 First, Exhibit A, as modified, and Exhibit B
22 attached to the agreement designate the water service areas
23 of each party to the agreement.

24 Second, the agreement sets out the powers that
25 each party to the agreement grants to the other to operate

1 in the respective corporate boundaries.

2 Third, the joint application contains a
3 provision acknowledging that the agreement in no way affects
4 or diminishes the rights of any water service par-- excuse
5 me -- provider that is not a party to the agreement to
6 provide service within the territory that is the subject of
7 the agreement.

8 And fourth, as a result of the three items I
9 just mentioned and additional items I will cover later, it
10 is my opinion that Commission approval of the agreement
11 would not be detrimental to the public interest.

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

16 A. Yes, it is. Based upon my review of the joint
17 application and the fact that the applicants tendered the
18 necessary filing fee at the time they filed the application,
19 it is my opinion that the requirements have been met.

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

23 A. As is noted in the joint application and as
24 the Staff has verified, no existing customers of either the
25 District or the City will have their water service supplier

1 changed as a result of the agreement.

2 Q. Are you aware of any customer inquiries or
3 complaints that have been received regarding the joint
4 application or the territorial agreement?

5 A. No. To my knowledge, the Staff has not
6 received any contacts of any kind regarding the application
7 or agreement. And this is based upon responses to an
8 inquiry that I made of my Staff, the Staff of the
9 Commission's consumer services department and the Staff of
10 the Commission's public information and education department
11 regarding customer calls or other contacts they may have
12 received.

13 And also, had such calls or contacts been
14 received by other members of the Staff, I'm sure I would
15 have been made aware of those.

16 Additionally, Ms. O'Neill of the Office of
17 Public Counsel has informed me that her office did not
18 receive any inquiries or complaints regarding the
19 application or the agreement.

20 Q. Is there anything else regarding the
21 territorial agreement that you think the Commission should
22 consider in reaching its decision in this case?

23 A. Yes. There are five additional items to which
24 I believe the Commission should give positive consideration.
25 First, implementation of the agreement will enable the

1 parties to avoid wasteful and costly duplication of
2 facilities and services in the areas that are the subject of
3 the agreement.

4 Second, implementation of the agreement will
5 preclude any destructive competition that might otherwise
6 arise between the parties to the agreement in the subject
7 service areas.

8 Third, implementation of the agreement will
9 improve the ability of the parties to plan for future water
10 service and will enable prospective customers to know who
11 will provide their water service.

12 Fourth, implementation of the agreement will
13 establish a method for the parties to amend their service
14 territories in the future.

15 And, fifth, I would also ask the Commission to
16 note that it is the Staff's opinion that the parties to the
17 agreement have both the technical ability and the system
18 capacity to provide adequate service to the customers in the
19 agreed-upon service areas.

20 Q. Okay. Mr. Johansen, I'm now going to hand to
21 you what's previously been marked as Exhibit No. 3. Could
22 you please identify that?

23 A. Yes. This is a copy of the Unanimous
24 Stipulation and Agreement that the City, the District, the
25 Commission Staff and the Public Counsel entered into and

1 filed in this case on January 17th.

2 Q. Are you familiar with the terms of this
3 Stipulation and Agreement?

4 A. Yes.

5 Q. Did you participate in the development of the
6 Stipulation and Agreement?

7 A. Yes, I did.

8 Q. And do you recommend that the Commission
9 approve this Stipulation and Agreement?

10 A. Yes, I do.

11 Q. Do you have anything further that you'd like
12 to add at this time?

13 A. No, I don't.

14 MS. KIZITO: Your Honor, at this time I'd like
15 to offer Exhibits 1, 2 and 3 into the record as evidence and
16 I'd also like to tender the witness for cross-examination.

17 JUDGE JONES: Are there any objections to the
18 evidence as submitted?

19 MS. O'NEILL: No.

20 MR. STEWART: No objection.

21 JUDGE JONES: Exhibits 1, 2 and 3 will be
22 admitted into the record.

23 (EXHIBIT NOS. 1, 2 AND 3 WERE RECEIVED INTO
24 EVIDENCE.

25 JUDGE JONES: Ms. O'Neill, do you have any

1 questions for Mr. Johansen?

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

3 JUDGE JONES: Mr. Stewart, do you have any
4 questions?

5 MR. STEWART: No questions, your Honor.

6 JUDGE JONES: Commissioner Lumpe, do you have
7 any questions?

8 QUESTIONS BY COMMISSIONER LUMPE:

9 Q. Mr. Johansen, I have one question here. And
10 the issue is, this is an uncontested Stipulation and
11 Agreement. Correct?

12 A. Correct.

13 Q. Now, currently on the statutes all territorial
14 Stipulations and Agreements have to hold this hearing, this
15 kind of a hearing. Right?

16 A. Yes, ma'am.

17 Q. And normally it takes about 10, 15, maximum
18 maybe 30 minutes; is that correct?

19 A. Correct.

20 Q. Would you have any opinion if the statute were
21 proposed to be changed so that only contested cases would
22 come before the Commission?

23 A. Well, I think that would be an excellent idea.
24 And last year, as a matter of fact, I believe the Commission
25 included an amendment to the current statute to achieve

1 that, but that was not successful. I don't believe we've
2 addressed that specifically this year, but I would certainly
3 be in favor of it.

4 Q. Okay. That's what I wondered, if you might
5 have an opinion.

6 COMMISSIONER LUMPE: May I ask the judges --
7 or I mean the counsel back there? Mr. Stewart, would you
8 also agree with that as being an efficient move only to do
9 contested? Because you had to bring a couple of witnesses
10 with you who had to take time out from their schedules and
11 their work, etc., to come to Jefferson City for what amounts
12 to about a 15-minute hearing?

13 MR. STEWART: Commissioner, I'm very glad you
14 asked that question because, as you know, I've probably
15 appeared in if not all, but certainly the majority of these
16 water territorial agreement cases that have come before the
17 Commission. And in many -- many times they were
18 uncontested.

19 I couldn't agree more with you and with
20 Mr. Johansen that the requirement for an evidentiary
21 on-the-record hearing in an uncontested case is nothing but
22 waste of time and resources that should be remedied.

23 And had we known -- had Harry Hill and myself
24 and a few others had known when we were drafting the statute
25 in the first place that that one clause was not going to be

1 subject to the Deffenderfer (ph.) exception, we would have
2 probably not written it that way.

3 I couldn't agree more with Mr. Johansen. I
4 think in a non-contested case involving a territorial
5 agreement, I think the requirement of a hearing should be
6 dispensed with.

7 COMMISSIONER LUMPE: Could I suggest then that
8 maybe you and Harry Hill might be supportive of such an
9 initiative?

10 MR. STEWART: I haven't spoken with Mr. Hill
11 in a long time, but I suspect he would be amenable to that.

12 COMMISSIONER LUMPE: I wondered why he wasn't
13 in the first place, but if you think -- you think that
14 might -- and I know it's not just water cases. We have, you
15 know, gas and electric and we have to bring those people in
16 again and it just seems terribly inefficient to me.

17 MR. STEWART: Yeah. And actually in Harry and
18 my defense, I guess, when we drafted this statute, we were
19 modeling the water territorial agreement statute on the
20 electric territorial agreement statute.

21 And, frankly, on the electric side, I think
22 due to the -- there's more money involved, there's a lot
23 more interest in those cases, I think that's probably why
24 that requirement may be in there for the electric, although
25 frankly, I think on an uncontested case, it would work there

1 as well.

2 But I do remember that during the -- when the
3 General Assembly and the legislative process was going on,
4 there were fears by some of the players that they didn't
5 want to give up the evidentiary hearing aspect of it. And
6 that's probably why it got written the way it did to begin
7 with, but not due to the water side.

8 If it was there at all, it was due to the
9 electric side. And when we cookie cuttered over to the
10 water, perhaps we should have changed that.

11 COMMISSIONER LUMPE: We might see some support
12 for such an initiative from yourself and the small water
13 companies and those sorts of things. Right?

14 MR. STEWART: I can't imagine that they would
15 oppose it. And speaking just for myself, I would be more
16 than happy to testify in favor of that change as a
17 practicing attorney in this area.

18 COMMISSIONER LUMPE: Will you be talking to
19 Harry Hill?

20 MR. STEWART: Like I said, I haven't seen him
21 in a long time. If I do, I will --

22 COMMISSIONER LUMPE: He's still lobbying for
23 the small water companies.

24 MR. STEWART: I'll see what I can do to track
25 him down and put a bug in his ear.

1 COMMISSIONER LUMPE: Okay. Thank you.

2 Ms. Kizito, any opinion on whether we should
3 have these hearings on uncontested cases?

4 MS. KIZITO: I would agree in the case of a
5 water territorial agreement that if it's uncontested, a
6 hearing is not necessary.

7 COMMISSIONER LUMPE: Ms. O'Neill?

8 MS. O'NEILL: Commissioner, I can speak for
9 myself. I'm not sure I can bind my office by this comment,
10 but I would think that in cases where there is a Unanimous
11 Stipulation and Agreement, changing the mandatory language
12 for a hearing to permissive language where a hearing could
13 be held if the Commissioners had questions or a member of
14 the public wrote in, something like that would certainly be
15 something that we would be behind. I can't promise you
16 that's the whole office's position, but that's my general
17 sense.

18 COMMISSIONER LUMPE: Okay. Thank you very
19 much. That's the only question. There's no tax impact here
20 because they're both public entities. Correct?

21 MR. STEWART: That's correct.

22 COMMISSIONER LUMPE: That's my only question
23 and I just wanted to get your sense because we talked about
24 it a little bit in agenda the other day and wondered why we
25 couldn't sort of maybe make that happen. Thank you.

1 JUDGE JONES: I just have a couple of
2 questions.

3 QUESTIONS BY JUDGE JONES:

4 Q. Mr. Johansen, the City is currently providing
5 service to those persons in those subdivisions. Right?

6 A. That's correct.

7 Q. It sounds like the agreement has formalized
8 what's already occurring?

9 A. That's basically correct, yes.

10 JUDGE JONES: Okay. I also have a concern --
11 I'm not sure which of the three attorneys would like to
12 address this, but in the actual territorial agreement
13 concerning the addendums there's a paragraph on page 4 of
14 the addendum that says, If the Staff of the Public Service
15 Commission or Office of Public Counsel do not submit a
16 pleading objecting to the addendum within 45 days of the
17 filing thereof, the addendum shall be deemed approved by the
18 aforesaid parties.

19 That language leads me to believe that if an
20 opposing party does not file something in opposition to the
21 addendum, then that addendum will become valid, approved and
22 in place. But it's my understanding from the reading of
23 statutes that addendums are treated just like applications
24 are for Commission approval. Is that your-all's
25 understanding also or is the language just confusing?

1 MS. O'NEILL: Judge Jones, the way I
2 interpreted that language is that we would -- that that
3 would not preclude or usurp the Commission's authority on
4 whether or not to finally approve the agreement. It was
5 just if we had -- if my office had specific problems with
6 the language, that we were to bring them to their
7 attention --

8 JUDGE JONES: Within 45 days?

9 MS. O'NEILL: -- within 45 days.

10 JUDGE JONES: Is that your understanding,
11 Ms. Kizito?

12 MS. KIZITO: Yes, it is. Yes, it is.

13 JUDGE JONES: And, Mr. Stewart?

14 MR. STEWART: I would think so. And, in fact,
15 the language that I'm looking at, Shall be deemed approved
16 by the aforesaid parties does not -- that would just mean
17 among the parties as opposed to the Commission.

18 JUDGE JONES: Okay. All right. I don't have
19 any other questions.

20 Does anyone have any other questions or
21 statements or comments they'd like to make before we
22 conclude the hearing?

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

24 JUDGE JONES: Okay. Hearing none, the hearing
25 is concluded. Thank you.

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I N D E X

STAFF'S EVIDENCE:

DALE JOHANSEN

| | |
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| | | | | |
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| 3 | Joint application for approval | | 11 | 20 |
| 4 | Exhibit No. 2 | | | |
| 5 | Substitute for Exhibit A to the agreement | | 11 | 20 |
| 6 | Exhibit No. 3 | | | |
| 7 | Unanimous Stipulation and Agreement | | 11 | 20 |
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