

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Staff of the )  
Missouri Public Service Commission, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
Consolidated Public Water Supply District, )  
C-1 of Jefferson County, Missouri, )  
 )  
and )  
 )  
City of Pevely, Missouri, )  
 )  
Respondents. )

**File No. WC-2014-0018**

**RESPONDENTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS**

COME NOW Respondents by and through undersigned counsel and for their Memorandum in Support of their Motion To Dismiss states to the Public Service Commission as follows:

The complaint herein is based on the allegation that section 247.172 RSMo grants the Public Service Commission jurisdiction of an agreement which the Respondents entitled Territorial Agreement and entered into in 2007. The first question for the Public Service Commission is whether the provisions of section 247.172 RSMo apply or whether sections 247.160 and 247.170 RSMo are controlling. If the Public Service Commission finds that the provisions of section 247.172 RSMo are controlling, the question becomes whether the Public Service Commission has the authority to hear a complaint regarding a territorial agreement that was not presented for a report and order and was not approved by the Commission.

**I. What is the controlling statute regarding the 2007 agreement of C-1 and Pevely?**

Jurisdiction over agreements entered into by municipalities and public water supply districts where the boundaries of the entities overlap lies with the Circuit Court of the county in which the public water supply district was originally organized pursuant to sections 247.160 and 247.170 RSMo. Section 247.160 RSMo provides that “when any part of the territory of a public water supply district has been included by annexation into the corporate limits of a municipality, the board of directors shall have the power to contract with such municipality for operating the waterworks system within such annexed area.” Section 247.170 RSMo provides for a detachment procedure in the event “the city and the board of directors of the district are unable to agree upon a service, lease or sale agreement, or are unable to proceed under section 247.160 RSMo.

Section 247.172 RSMo was enacted in 1991 governs territorial agreements entered “**as between and among** public water supply districts, water corporations subject to Public Service Commission jurisdiction, **and** municipally owned utilities.” (Emphasis added). No water corporation subject to Public Service Commission jurisdiction is a party to the agreement in question. The phrasing of the statute requires all three entities to be parties to a territorial agreement in order to trigger Public Service Commission jurisdiction. Had the legislature intended otherwise the conjunction “or” would have been used. “The primary rule of statutory interpretation is to give effect to the legislative intent as reflected in the plain language of the statute...we enforce statutes as written, not as they might have been written.” *Hogan v. Board of Police Commissioners of Kansas City*, 337 S.W.3d 124, 131 (Mo. App. W.D. 2011).

The analysis and ruling in *City of Harrisonville v. Public Water Supply District 9 of Cass County* strongly supports the argument that a water corporation subject to Public Service Commission jurisdiction is a necessary party to a territorial agreement to trigger the jurisdiction

of the Public Service Commission under section 247.172 RSMo. In *City of Harrisonville v. Public Water Supply District 9 of Cass County*, the appellate court discussed the twenty year water service agreement entered into by the parties in settlement of litigation in 1998 well after the enactment of section 247.172. 49 S.W.3d 225, 228 (Mo App W.D. 2001). The appellate court stated that it analyzed “those sections of Chapter 247 applicable to county water supply districts.” *Id.* at 232. The statutes applicable to County Water Supply Districts are sections 247.010 to 247.227 RSMo. The appellate court further discussed the authority of cities and public water supply districts to contract with each other pursuant to section 247.160 RSMo. The trial court analyzed the contract entered by the parties and the rights and obligations set forth in that agreement. *Id.* at 233. Like in the case of C-1 and Pevely, the City of Harrisonville and the Public Water Supply District of Cass County entered a service agreement in settlement of litigation which set forth the rights and obligations of the parties and designated certain areas of overlapping boundaries for service by a certain party. The court did not find the contract between the parties was not effective nor after its stated analysis of sections 247.010 to 247.227 RSMo did it find that the agreement was subject to the jurisdiction of the Commission. *Id.*

For the reasons set forth herein, the agreement of the Respondents is not subject to the jurisdiction of the Public Service Commission.

**II. Whether under the plain language of section 247.172 RSMo, the Public Service Commission has authority to hear a complaint of an unapproved territorial agreement?**

Even if the Commission determines that agreement between C-1 and Pevely is subject to the provisions of section 247.172 RSMo, the Public Service Commission still does not have jurisdiction to hear the complaint filed.

The Public Service Commission only has the power granted to it by the Legislature and may only act in a manner directed by the Legislature or otherwise authorized by necessary or reasonable implication and has no authority to interpret a statute in such a way that is contrary to the plain terms of the statute. *James Evans, et al. v. Empire District Electric Company*, 346 S.W.2d 313, 318 (Mo. App. W. D. 2011) and *Stat ex rel Mogas Pipeline, LLC v. Missouri Public Service Commission*, 366 S.W.3d 493, 496 (Mo. 2012). The Public Service Commission “is a creature of statute and can only function in accordance with its enabling statutes.” *Id.* “If a power is not granted to the PSC by Missouri statute, then the PSC does not have that power.” *Id.*

The general jurisdiction granted to the Public Service Commission is set forth in Section 386.250 RSMo (2013) which specifically provides that the Public Service Commission has no jurisdiction “over the service or rates of any municipally owned water plant or system in any city of this state except where such service or rates are for water to be furnished or used beyond the corporate limits of such municipality.” Section 247.172 RSMo gives the Public Service Commission limited and specific jurisdiction over municipalities and public water supply districts regarding territorial agreements entered into “between and among public water supply districts, water corporations subject to public service commission jurisdiction, and municipally owned utilities”.

“The primary rule of statutory interpretation is to give effect to the legislative intent as reflected in the plain language of the statute...we enforce statutes as written, not as they might have been written.” *Hogan v. Board of Police Commissioners of Kansas City*, 337 S.W.3d 124, 131 (Mo. App. W.D. 2011). The plain language of section 247.172.7 RSMo (2013) provides “The commission shall have jurisdiction to entertain and hear complaints involving any commission-approved agreement.” By the plain language of the statute, the only complaints that

can be heard are in regards to territorial agreements which have previously been presented to the commission and have received approval of the Commission by report and order.

After entering the agreement in 2007, C-1 and Pevely did not apply to receive approval of the Commission as these entities did not believe the agreement fell under the provisions of section 247.172 RSMo. Pursuant to the terms of section 247.172 RSMo, if a territorial agreement subject to the statute is not presented, it is not effective until presented. Nothing within the plain language of the statute gives the Public Service Commission jurisdiction to bring a complaint over an agreement that has not been presented or approved.

If the staff of the Public Service Commission is arguing that because C-1 and Pevely have been abiding by the terms of their agreement or seeking to enforce same there is some kind of *de facto* approval of the agreement that argument is contrary to the plain language of the statute. The statute sets forth the specific steps necessary before the Commission can approve any agreement. These steps include the filing of an application, notice to other water suppliers, and an evidentiary hearing to determine whether the agreement should be approved or disapproved. Section 247.172 RSMo (2013). None of those steps have been completed.

Further nothing in the language of section 247.172 RSMo grants the Public Service Commission authority to request fines of the parties to non-approved territorial agreements from the Circuit Court. By the terms of the statute the agreement would just be ineffective or void. Because the statute by its plain language does not grant jurisdiction over unapproved territorial agreements, the complaint herein must be dismissed.

WHEREFORE the Respondents pray the Public Service Commission dismiss this matter and for such other and further orders as are just under the circumstances.

/s/ Bianca L. Eden

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was mailed by U.S. Mail on this 20<sup>th</sup> day of September, 2013, unless served electronically via EFIS to:

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