

**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**

**PETITION FOR REHEARING REGARDING ORDER  
DENYING MOTION TO DISMISS**

COME NOW Respondents Consolidated Public Water Supply District C-1 of Jefferson County and City of Pevely, by and through undersigned counsel, and for their Petition for Rehearing states as follows:

1. This petition concerns an order issued by the Public Service Commission of the State of Missouri (hereinafter “Public Service Commission”) on October 23, 2013 and to become effective on November 4, 2013, denying the joint Motion of Consolidated Public Water Supply District C-1 of Jefferson County, Missouri (hereinafter referred to as “C-1” or “Respondents”) and the City of Pevely (hereinafter referred to as “Pevely” or “Respondents”) to dismiss the Complaint of the State of the Missouri Public Service Commission.

2. The basis of Public Service Commission’s order is that according to Public Service Commission section 247.172 RSMo grants to Public Service Commission exclusive jurisdiction over territorial agreements between a municipal corporation and a water district

and only two of the three entities named in section 247.172 RSMo is sufficient to grant jurisdiction and that section 386.390 RSMo authorizes Public Service Commission to hear the complaint.

3. On the 19<sup>th</sup> day of July, 2013, the Staff of the Public Service Commission filed a three count complaint seeking under each count that Respondent hold a hearing on the complaint and determine if a violation of section 247.172 RSMo, to deem each date of violation a separate offense, and to grant leave to Public Service Commission's General Counsel to proceed in Circuit Court to seek penalties against Respondents.

4. On the 20<sup>th</sup> day of September, 2013, Respondents herein filed a Joint Motion to Dismiss the Complaint of the Staff of the Public Service Commission on the basis that the Public Service Commission did not have jurisdiction of Respondents under section 247.172 RSMo on the basis that:

a. The Public Service Commission's jurisdiction of territorial agreements under Section 247.172 RSMo is to those agreements "**as between and among** public water supply districts, **water corporations subject to Public Service Commission jurisdiction**, and municipally owned utilities." (Emphasis added). In this case, no water corporation is involved; thus, Public Service Commission has no jurisdiction over the service agreement between Pevely, a municipality, and C-1, a water district.

b. Further, Section 247.172.7 RSMo provides that the Respondent "shall have jurisdiction to entertain and hear complaints involving any **commission-approved territorial agreement**" (Emphasis added). There are no provisions within the statute for *de facto* approval of any agreement subject to Section 247.172 RSMo.

The statute requires under section 247.172.5 RSMo that before approval the Respondent shall **hold evidentiary hearings to determine whether an agreement should be approved or disapproved.** Even assuming, arguendo, that the service agreement of the parties were subject to Section 247.172 RSMo, by the express terms of Section 247.172.4 RSMo, said agreement is merely not effective, as there is no dispute that no report and order were sought from the Public Service Commission. There are no provisions under Section 247.172 RSMo which grant to the Public Service Commission the authority to fine municipal corporations or public water supply districts for failing to obtain a report and ordered approved from the Public Service Commission; rather, pursuant to the plain meaning of Section 247.172.4, they would merely be ineffective or void.

5. On the 1<sup>st</sup> day of October, 2013, the Staff of the Public Service Commission filed its Response to Respondents' Motion to Dismiss.

6. On the 4<sup>th</sup> day of October, 2013, Respondents filed its Reply to Staff's Response.

7. Public Service Commission's Order Denying Respondents' Motion to Dismiss usurps its legislative power, usurps judicial power and Respondent acts in excess of its jurisdiction in this matter by not applying a plain reading to section 247.172 RSMo that required (1) a water corporation subject to PSC jurisdiction to be a party to a territorial agreement or (2) limiting complaints to PSC approved agreements; and, by claiming jurisdiction under section 386.390 RSMO when section 386.250 RSMo and 247.172.7 directly refutes any jurisdictional claim against a municipal utility operating within its

municipal boundaries and a public water supply district. Further, section 247.172 RSMo limits the jurisdiction as set forth in section 247.172 RSMo regarding complaints to section 7 which specifies the actions available to the Public Service Commission which does not include the levying of fines or filing complaints regarding non-approved territorial agreements.

8. The pertinent facts regarding the denial of the Motion to Dismiss are as follows:

a. C-1 is a public water supply district formed under and subject to the provisions of Chapter 247 RSMo for the purpose of supplying water to the residents within its corporate boundaries which are located within Jefferson County, Missouri.

b. Pevely is a fourth class city authorized to engage in the provision of municipal utilities pursuant to Chapters 79 and 91 RSMo.

c. That certain areas within the boundaries of C-1 as originally formed have been annexed into the corporate limits of Pevely.

d. That prior to 2007 no action pursuant to Section 247.160 RSMo and 247.170 RSMo had been undertaken by C-1 and Pevely.

e. That in 2006 suit was filed in the 23<sup>rd</sup> Judicial Circuit at Hillsboro, Missouri, by C-1 against Pevely in Cause No. 23CV306-1286 to enjoin Pevely from providing water service to certain areas of overlapping territory as the provisions of Section 247.170 RSMo had not been followed and no agreement under Section 247.160 RSMo had been reached.

f. That in 2007 a service agreement entitled a Territorial Agreement was

entered into by C-1 and Pevely agreeing on the service to be provided in the overlapping territory. The agreement, set forth the area to be serviced, being the subdivisions known as The Hunters Glen, Tiara at the Abbey, and the Vinyards at Bushberg, was for a set term of ten years ending in 2017.

9. Section 247.160 and Section 247.170 RSMo provide the statutory provisions regarding service agreements between public water supply districts and municipal water utilities whose territorial boundaries overlap.

10. That Section 247.160 RSMo grants to the Circuit Court the jurisdiction over service agreements entered into between a municipal corporation and a public water supply district that have overlapping boundaries.

11. The Public Service Commission is a state agency whose general jurisdiction is set forth in Section 386.250 RSMo.

12. Nothing in Section 386.250 grants Public Service Commission jurisdiction over a municipality, or a water district. In fact, Section 386.250 expressly states that ... “nothing in this section shall be construed as conferring jurisdiction upon the commission over the service or rates of any municipality around water system in any city...” Nothing in section 386.390 RSMo sets forth any authority of the Public Service Commission to override the jurisdictional provisions of section 386.250 RSMo.

13. 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).

14. “Courts may only look outside the plain meaning of the statute only when the language is ambiguous or would lead to an illogical result.” *In re the Estate of Hayden*, 258 S.W.3d 505, 508 (Mo. App. E.D. 2008) citing *State ex rel. Broadway-Washington Associates, LTD. v. Manners*, 186 S.W.3d 272, 275 (Mo banc 2006).

15. “The primary rule of statutory construction is to determine the intent of the legislature from the plain and ordinary meaning of the words used in the statute.” “Every word, clause, sentence and section of a statute should be given meaning.” *In re the Estate of Hayden*, 258 S.W.3d 505, 508 (Mo. App. E.D. 2008) citing *Bari v. Lindell Trust Co.*, 996 S.W.2d 655, 659 (Mo. App. E.D. 1999).

16. Under a plain reading of the statute, the Respondent only has jurisdiction to hear complaints over territorial agreements as between and among public water supply districts, water corporations subject to Public Service Commission jurisdiction, and municipally owned utilities which, after an evidentiary hearing, Public Service Commission has approved by report and order. Section 247.172.7 further provides, “nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting, or management of any public water supply district or municipally owned utility, or to amend, modify, or otherwise limit the rights of public water supply districts to provide service as otherwise provided by law.”

17. Section 386.390 RSMo does not give the Public Service Commission jurisdiction other than what is set forth in Section 386.250 RSMo and does not trump the specific language of 247.172 RSMo.

WHEREFORE Respondents pray the Public Service Commission grant a rehearing and dismiss Staff's Complaint for lack of jurisdiction, for costs expended herein 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 4<sup>th</sup> day of November, 2013, unless served electronically via EFIS to:

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