

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY**

**January 9, 2002**

**CASE NO: WA-2001-288**

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**Enclosed find certified copy of ORDER in the above-numbered case(s).**

**Sincerely,**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

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

In the Matter of the Application of St. Louis County	)	
Water Company, doing business as Missouri-American	)	
Water Company, for Restatement and Clarification of	)	<b><u>Case No. WA-2001-288</u></b>
its Certificate of Convenience and Necessity for St. Louis	)	
County, Missouri.	)	

**ORDER DIRECTING FILING**

On November 21, 2001, St. Louis County Water Company, doing business as Missouri-American Water Company, filed its Brief, explaining therein that it seeks in this proceeding a Certificate of Public Convenience and Necessity encompassing all of St. Louis County, Missouri, as well as a portion of Jefferson County, Missouri; or, in the alternative, Certificates of Public Convenience and Necessity permitting it to acquire and operate the municipal water systems of the cities of Florissant and Webster Groves.

In its Brief of November 21, the Company informed the Commission – for the first time in this proceeding – that acquisitions of the Florissant and Webster Groves systems were imminent and that prompt approval was desired. However, Company has not yet met the statutory preconditions for the relief it seeks.

Section 393.170, RSMo 2000, authorizes the Commission to grant Certificates of Convenience and Necessity to water corporations. Subsection 2 of that section states in part: “Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required

consent of the proper municipal authorities." Missouri Courts have uniformly held that municipal permission is a necessary precondition to the Commission's grant of a Certificate of Public Convenience and Necessity. For example, the Missouri Supreme Court stated in 1964:<sup>1</sup>

The necessity and effect of county court consent to the utilization by a public utility of county roads and highways in an unincorporated area of a county has regularly been recognized by the Commission itself. In *Re Southwest Water Co.*, 25 Mo. P.S.C. 637, 41 P.U.R. (NS) 127, the Missouri Public Service Commission refused a certificate to a water company which sought to operate in Jackson County. Refusal was based upon the failure of the appellant to show that consent of the Jackson County Court to the use of the county roads and highways had been obtained. In answer to the contention that Section 393.170 does not apply in instances where a utility proposed to operate in unincorporated areas of a county, the Commission's report stated:

'An examination of the findings of this Commission for many years back will show that the Commission has consistently required a showing that the applicant has secured the consent of what is considered proper municipal authority before granting authority to own, lease, construct, maintain, and operate any water, gas, electric, or telephone system as a public utility. Consent of the city, town, village, the county court or the State Highway Commission, depending upon whether the line or system was to be placed within the incorporated city, within the unincorporated area of the county, or along a state highway, has always been made a condition precedent to the granting of such certificate by this Commission.'

Company has nowhere shown that it possesses municipal franchises from either the City of Florissant or the City of Webster Groves. A list of Company's franchises, appended to its Application as Exhibit G, does not include either Florissant or Webster Groves. Florissant and Webster Groves are not among the intervenors in this proceeding

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<sup>1</sup> *St. ex rel. PWSD No. 2 of Jackson Co. v. Burton*, 379 S.W.2d 593, 599 (Mo. 1964).

and thus are not parties to the Unanimous Settlement Agreement, filed on September 28, 2001, whose signatories therein consent to the relief sought by Company.

Company itself acknowledges that these franchises are required: at Paragraph 2 of its Application, Company states: "Company may legally provide water service throughout the entirety of what was at that time unincorporated St. Louis County . . . without further governmental approvals, excepting only five [*sic*] then-incorporated cities . . . . In order to provide service to the six cities already incorporated at that time, namely, Kirkwood, **Webster Groves**, Ferguson, Bridgeton, Pacific and **Florissant**, . . . municipal franchises were required."<sup>2</sup>

The Commission is unable to grant the relief sought by Company where Company has not satisfied statutory conditions precedent.

**IT IS THEREFORE ORDERED:**

1. That St. Louis County Water Company, doing business as Missouri-American Water Company, shall within ten days of the date of this Order file the verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities as Section 393.170.2, RSMo 2000, requires.

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<sup>2</sup> Emphasis added.

2. That this order shall become effective on January 19, 2002.

**BY THE COMMISSION**



**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

(SEAL)

Kevin A. Thompson, Deputy Chief  
Regulatory Law Judge, by delegation  
of authority pursuant to  
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 9th day of January, 2002.

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and  
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,  
Missouri, this 9<sup>th</sup> day of Jan. 2002 .**

*Dale Hardy Roberts*

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**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

