BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of The Meadows Water Company, North Suburban Public Utility Company and the City of Willard, Missouri, for An Order Authorizing the Sale, Transfer and Assignment of Water and Sewer Assets to the City of Willard and in Connection Therewith Certain Other Related Transactions.	)))))))	Case No. WO-2007-0424

RESPONSE TO APPLICANTS' SUGGESTIONS
OPPOSING APPLICATION TO INTERVENE

COMES NOW the City of Springfield, Missouri ("Springfield"), pursuant to 4 CSR 240-2.080(15), and for its *Response To Applicants' Suggestions Opposing Application To Intervene*, respectfully states as follows:

1. In their *Suggestions Opposing Application To Intervene* ("Suggestions") filed on June 1, 2007, Joint Applicants ask the Commission to impose a new, inapplicable standard for intervention in Commission cases, purportedly based upon Rule 52.12 (a) (2) of the Missouri Rules of Civil Procedure. This rule by its terms applies only to "intervention of right" in civil cases brought in circuit courts[1] and does not govern intervention in Commission cases. As recently as May 15, 2007, the Commission has reaffirmed that "Commission rule 4 CSR 240-2.075 governs intervention before the Commission". *In the Matter of the Joint Application of Great Plains Energy Incorporated et al.*, Case No. EM-2007-0374, *Order Granting Applications To Intervene* issued May 15, 2007.

[1] Interestingly, Joint Applicants' conveniently ignore Rule 52.12 (b) of the Missouri Rules of Civil Procedure, which specifically references, singles out, and indicates a preference for permissive intervention for "governmental subdivisions" not yet a party. In this proceeding, Springfield is a "governmental subdivision" seeking to intervene in a case where one of the Joint Applicants also is a "governmental subdivision".

2. Beyond this, Joint Applicants not only misstate, misconstrue, and misapply the provisions of 4 CSR 240-2.075, they also ignore the manner in which that rule traditionally has been applied by the Commission in prior cases.

3. As discussed in more detail below, since Springfield has fully complied[2] with all the provisions of 4 CSR 240-2.075, and has filed its *Application To Intervene* in a timely manner, the Commission should reject Joint Applicants' arguments and grant Springfield intervention in this proceeding.[3]

4. With respect to Joint Applicants' arguments, they intentionally misstate at the very outset the language of the Commission's intervention rule when they state in paragraph 7 of their *Suggestions* that Springfield "has failed to show an interest that *will be* adversely affected" by the outcome of this proceeding (*emphasis supplied*). To the contrary, Commission rule 4 CSR 240-2.075(4) (A) only requires a showing of an interest "which *may be* adversely affected by a final order arising from the case" (*emphasis supplied*).

5. In addition to misstating the actual language of the rule, Joint Applicants' proposed interpretation also is clearly contrary to the unambiguous language of 4 CSR 240-2.075(2), which permits an applicant for intervention at the time of the intervention request to state that it is not sure whether it opposes or supports the relief sought. In paragraph 7 of Springfield's *Application To Intervene* Springfield clearly stated that:

---

[2] The Commission often grants intervention even when the applicant meets only the *minimum* standards of the rule. *See, In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increases*, Case No. WR-2000-281, *Order Granting Intervention* issued December 29, 1999.

[3] This is so whether Springfield's *Application To Intervene* is viewed as one of "intervention of right" or one of "permissive intervention". The Commission has interpreted section 2.075 (4) (A) of its rule as authorizing intervention of right and section 2.075 (4) (B) as authorizing permissive intervention. *See, In the Matter of the Tariff Filing of Aquila, Inc.*, Case No. HR-2005-0450, *Order Granting Intervention* issued July 28, 2005.

"[a]t this time, Springfield does not support nor oppose the relief sought by Joint Applicants and is unsure of the position it will take in this proceeding as it has not yet had the opportunity to review the possible ramifications that the transactions proposed by the Joint Applicants might have on Springfield's interests".

6. To require Springfield at this early juncture to allege that it will be adversely affected by a final order arising from the case not only would require Springfield to allege something in good faith in a pleading that it simply cannot, at least at this time, allege. In addition, to require this is clearly contrary to the standards set forth in the Commission's rule. Moreover, once all the relevant facts relating to the *Joint Application* are ferreted out, the possible impacts determined, and respective parties' positions are fully discussed, Springfield ultimately may well end up supporting or at least not opposing the Joint Application.

7. In their *Suggestions* Joint Applicants' further convolute the clear language and application of the rule by erroneously charging that because Springfield has not alleged that it would be adversely affected, Springfield's intervention somehow cannot be in the public interest. Once again, Joint Applicants' misstate the language, structure, and proper application of Commission's rule. 4 CSR 240-2.075 in pertinent part provides:

> (4) The commission may on application permit any person to intervene on a showing that:
>
> > (A) the proposed intervenor has an interest which is different from the general public and which may be adversely affected by a final order arising from the case;
> >
> > **or,**

(B) granting the proposed intervention would serve the public interest.

Accordingly, a minimum showing of compliance with *either* subsection (A) *or* subsection (B) justifies the grant of intervention by the rule's own terms; the applicant need not show both.

8. In any event, Springfield has nevertheless shown compliance with both subsections of the rule. With respect to section 4 CSR 240-2.075 (4) (A), even Joint Applicants' concede Springfield's interests are different from those of the general public.[4] The proper application of the "adversely affected" prong of this provision already has been discussed above. To reiterate, and perhaps further clarify those interests already listed in its *Application To Intervene*, Springfield's unique interests in this proceeding which *may be* adversely affected by a final order in this proceeding, among other things, include:

a. Springfield currently *owns property* located *within* the certificated service area of The Meadows Water Company ("The Meadows"). This presumably means that if a new Springfield-owned facility today required water or sewer service within this area, The Meadows would be required by law to provide such service to Springfield under the rates, terms and conditions of The Meadow's Commission approved tariffs. If the City of Willard is permitted to acquire The Meadow's service area, at this point it remains unclear whether the rates, terms and conditions offered to Springfield by the City of Willard would be equal to, compare favorably, or compare unfavorably—or even whether the City of Willard could lawfully refuse to provide service to Springfield-owned facilities. These concerns are especially heightened with

[4] *See*, Joint Applicants' *Suggestions*, paragraph 7.

respect to Springfield's regional airport property and the fact that The Meadow's certificated service area currently lies outside of the corporate municipal boundaries of the City of Willard. The Commission already has dealt with this type of unusual situation and should be well aware of the *many* issues and potential problems arising out of a sale of a regulated utility whose service area lies beyond the purchasing municipality's corporate boundaries. *See, In the Matter of the Application of Leland Mitten,* ("Finley Valley Water Company"), 4 Mo. P.S.C. 3d, 253 (1995). Whether the same types of problems there identified and dealt with in that case will also arise in this case cannot be determined until the case moves forward beyond this early stage—even the usual prehearing conference has not yet been set. At the very minimum, Springfield deserves the same intervention treatment afforded to the customers of the Finley Valley Water Company to determine if its interests somehow could be adversely affected by approval of the *Joint Application*.

b. Springfield currently has a contract with the City of Willard under which Springfield is obligated to provide, on an all-requirements basis, sewage treatment services for the City of Willard until 2004 under terms set forth in the contract. The City of Willard currently has no sewage treatment facilities of its own. The operation of and the planning for necessary sewage treatment facilities cannot properly be undertaken on a piecemeal basis, stand alone basis. Department of Natural Resources regulations, regional impacts and planning, and the effect on existing treatment facilities must be considered. The potential effects of the proposed acquisition on Springfield's contractual obligations, as well as on potential regional watershed and other environmental requirements, will remain unknown until this case moves beyond its initial stage. As a

contractual party with the City of Willard, and as an owner/operator of existing sewage treatment and other facilities in the immediate area, Springfield clearly as a direct and unique interest in the outcome of this proceeding.

c. As one of the state's major municipalities, Springfield lawfully has adopted an Urban Service Area Policy which encompasses a significant portion of The Meadows certificated service area. The effects of the proposed acquisition on Springfield's Urban Service Area Policy, and potential new infrastructure development by Springfield within its urban service area, will remain unknown until this case moves beyond its initial stage. Here too, Springfield has a direct and unique interest.

For these, and the other reasons previously specified in its *Application To Intervene*, Springfield should be permitted to intervene under subsection 4 CSR 240-2.075 (4) (A).

9. With respect to 4 CSR 240-2.075 (4) (B) (the "public interest" showing), Springfield is a Constitutional Charter City with a population of approximately 155,000 citizens. Springfield has already and specifically set forth numerous interests in this proceeding that are different than that of the general public and which clearly cannot be adequately represented by any other party to this case.[5] Standing alone, this supports a finding that Springfield's intervention is in the public interest. Moreover, Springfield's

[5] *See*, paragraph 5, *Application To Intervene*. *See*, *also*, paragraph 6, *Application To Intervene* ("Springfield seeks to intervene in this proceeding to fully understand whether or how the transactions proposed by the Joint Applicants might affect the above-specified interests, and if necessary, defend those interests, on behalf of the citizens of Springfield."

intervention is in the public interest for the additional reasons set forth paragraph 9 of its *Application To Intervene*.[6]

10. While not addressed in its *Application To Intervene* and not necessary to the Commission's ruling here, Springfield notes here that the Commission in a few instances in the past also has factored into its public interest review the issue of delay of the proceedings and the treatment of highly confidential or proprietary information. With respect to the former, this proceeding carries no operation of law date nor has the Commission even set a procedural schedule, expedited or otherwise, which in theory otherwise might militate against permitting Springfield's (or some other party's) intervention. For what it might be worth, it certainly is not Springfield's intent to try to delay this proceeding if it is permitted to intervene. With respect to the latter, both the City of Willard and Springfield are municipal corporations subject to the Sunshine Law. Accordingly, concerns involving the proper treatment of highly confidential or proprietary information are not an issue in this case.

11. Finally, the inflammatory statements made by Joint Applicants in a footnote[7] to their *Suggestions* require brief comment. First, Springfield has not unlawfully or in any other way "encroached" on The Meadow's certificated service area nor is Springfield a "trespasser". Springfield's provision of similar services in and around The Meadow's certificated area not only is fully lawful, but also is required by sound municipal-area planning policy and Department of Natural Resources

---

[6] "Granting Springfield's intervention would furthermore serve the overall public interest, if for no other reason than Springfield will be in a unique position to bring (as necessary) additional information and an additional perspective to assist the Commission in its deliberations, which in all likelihood otherwise would be absent without Springfield's direct participation as a party."

[7] See footnote 2, Joint Applicants' *Suggestions*.

requirements, which are *major* public interest issues. Joint Applicants presumably would attempt to keep such issues out of the Commission's deliberations if Springfield was not granted intervention. Second, the un-called for vehemence in which Joint Applicants' attack Springfield in their pleading lends yet further credence to Springfield's argument that it has definite, real, and unique interests in this proceeding and should be allowed to intervene.

WHEREFORE, for all the above-stated reasons, and having fully complied with the requirements of 4 CSR 240-2.075 in a timely manner, the City of Springfield, Missouri respectfully requests that it be allowed to intervene and fully participate as a party in this proceeding.

Respectfully submitted,

/s/ Charles Brent Stewart

Charles Brent Stewart, MoBar #34885
STEWART & KEEVIL, L.L.C.
4603 John Garry Drive, Suite 11
Columbia, Missouri 65203
(573) 499-0635
(573) 499-0638 (fax)
Stewart499@aol.com

/s/ Howard C. Wright, Jr.

Howard C. Wright, Jr., MoBar #19391
Special Counsel
Busch Building
Law Department
840 Boonville Avenue
Springfield, Missouri, 65801
(417) 864-1639
hwright@ci.springfield.mo.us

ATTORNEYS FOR THE CITY OF SPRINGFIELD, MISSOURI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Application To Intervene was sent to counsel for all parties of record in Case No. WO-2007-0424 by depositing same in the U.S. Mail, first class postage prepaid, by hand-delivery, or by electronic transmission, this 5th day of June, 2007.

/s/ Charles Brent Stewart

_____