

**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' JOINT MOTION TO DISMISS FOR FAILURE  
TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

COME NOW Respondents, by and through undersigned counsel, and for their Joint Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted states to the Commission as follows:

1. Consolidated Public Water Supply District C-1 of Jefferson County, Missouri (hereinafter referred to as "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.
2. The City of Pevely (hereinafter referred to as "Pevely") is a fourth class city authorized to engage in the provision of municipal utilities pursuant to Chapters 79 and 91 RSMo.
3. That certain areas within the boundaries of C-1 as originally formed have been annexed into the corporate limits of Pevely.

4. 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.

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

6. 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.

7. 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.

8. 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.

9. The Missouri Public Service Commission (“PSC”) is a state agency whose general jurisdiction is set forth in Section 386.250 RSMo.

10. Nothing in Section 386.250 grants PSC 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...”

11. 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).

12. The PSC'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 own utilities." (Emphasis added).

13. In this case, no water corporation is involved; thus, PSC has no jurisdiction over the service agreement between Pevely, a municipality, and C-1, a water district.

14. Further, Section 247.172.7 RSMo provides that the PSC may only hear complaints of PSC approved territorial agreements.

15. There are no provisions within the statute for *de facto* approval of any agreement subject to Section 247.172 RSMo. The statute requires that before approval the PSC shall **hold evidentiary hearings to determine whether an agreement should be approved or disapproved**.

16. 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 RSMo, said agreement is merely not effective, as there is no dispute that no report and order were sought from the PSC. There are no provisions under Section 247.172 RSMo which grant to the PSC the authority to fine municipal corporations or public water supply districts for failing to obtain a report and ordered approved from the PSC; rather, pursuant to Section 247.172, they would merely be ineffective or void.

17. The Respondents incorporate their Memorandum in Support filed herewith as if fully set forth.

WHEREFORE Respondents pray the Public Service Commission dismiss Staff's Complaint for lack of jurisdiction 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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/s/ Bianca L. Eden\_\_\_\_\_