

**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 REPLY TO STAFF'S RESPONSE TO MOTION TO DISMISS**

COME NOW Respondents City of Pevely ("Pevely") and Consolidated Public Water Supply District C-1 of Jefferson County, Missouri ("C-1"), by and through counsel, and for their Joint Reply to Staff's Response to Motion to Dismiss state as follows:

Staff argues that circuit courts do not have jurisdiction over territorial agreements between a municipality and a water district. Staff is wrong. Missouri law is clear that circuit courts have exclusive original jurisdiction under the Constitution in all civil cases not otherwise provided for. Board of Public Works of Rolla v. Sho-Me Power Corp., 244 S.W.2d 55, 59 (Mo. banc 1951). In this case, there is no other entity that has jurisdiction over a service agreement entered into between Pevely and C-1; thus, exclusive jurisdiction lies with the circuit court.

Staff contends that § 247.172 RSMo. (2000) gives the Commission ("PSC") exclusive jurisdiction over territorial agreements between municipalities and public water supply districts. Staff misconstrues the provisions of § 247.172. Section 247.172 is not a jurisdictional statute. The

jurisdictional statute governing the PSC is § 386.250 RSMo. Section 386.250 expressly grants the PSC jurisdiction over water corporations. 386.250(3) RSMo. (2000). However, nothing in § 386.250 grants the PSC jurisdiction over a municipality or a water district. In fact, § 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 municipally owned water system in any city ...” The Missouri legislature clearly did not intend for the PSC to have jurisdiction over a municipality or a water district.

Staff argues that because § 247.172 refers to agreements “as between and among public water supply districts, water corporations subject to the PSC’s jurisdiction, and municipally-owned utilities,” the PSC has jurisdiction over municipalities and water supply districts. This argument is illogical. Section 247.172 expressly acknowledges that only water corporations are subject to the PSC’s jurisdiction. Hence, for the PSC to have jurisdiction to approve or disapprove a territorial water service agreement, a water corporation must be a party to that agreement.

Staff argues that the terms “as between and among” indicate that territorial agreements under the jurisdiction of the Commission may involve municipalities, public water supply districts and regulated water corporations or any combination of the three, because “between” implies two choices, and “among” implies more than two choices. Thus, using both terms allows for combinations of two and also more than two. (See Staff’s Response, p. 5) Even assuming that “between” implies two choices and “among” implies more than two choices, Staff is incorrect in their conclusion that the PSC has jurisdiction over territorial agreements involving any two of the three parties. To the contrary, regardless of whether there are two or more than two parties to a territorial water agreement, for the PSC to have jurisdiction over that agreement, a water corporation must be one of the parties to the agreement, because the PSC only has jurisdiction over water

corporations.

Staff suggests that “necessity and reasonable implication dictate” that the PSC should have jurisdiction over territorial agreements between a municipality and a water district. (See Staff’s Response, p. 3) Although Staff acknowledges that the PSC does not normally regulate municipalities or water districts, it argues that “the case at hand provides a very practical example of why the commission should be tasked with approval of agreements between those two entities.” (See Staff’s Response, p. 4) While Staff may believe it would be convenient for the PSC to have jurisdiction over service agreements entered into between a municipality and a water district, the simple fact remains that the PSC does not have jurisdiction or regulatory power over those two entities, and the PSC cannot exercise such jurisdiction or regulatory power unless and until the Legislature sees fit to confer such authority upon the PSC. See State ex rel. Utility Consumers’ Council of Missouri Inc. v. Public Service Commission, 585 S.W.2d 41, 49 (Mo. banc 1979) (“Neither convenience, expediency or necessity are proper matters for consideration in the determination of whether or not an act of the PSC is authorized by the statute.”).

In short, if the PSC attempts to exercise regulatory power over the agreement at issue in this case, it will be acting in excess of its jurisdiction granted by § 386.250. As such, the PSC must dismiss Staff’s complaint regarding the service agreement entered into between Pevely and C-1.

Respectfully submitted,

/s/ Terrance J. Good

Terrance J. Good #25336

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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 October, 2013, unless served electronically via EFIS to:

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