

**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**

**RESPONDENT CONSOLIDATED PUBLIC WATER SUPPLY DISTRICT, C-1 OF  
JEFFERSON COUNTY, MISSOURI'S ANSWERS AND OBJECTIONS TO  
COMPLAINANT'S MOTION FOR SUMMARY DETERMINATION**

COMES NOW Respondent, Consolidated Public Water Supply District, C-1 of Jefferson County, Missouri ("C-1"), and for its *Answers and Objections to Complainant's Motion for Summary Determination*, pursuant to 4 CSR 240-2.117, states as follows:

**INTRODUCTION**

C-1 objects to *Staff's Motion for Summary Determination* because it does not comply with either the Commission's rules or the Rules of Civil Procedure. The requirements for motions for summary determination are set forth in 4 CSR 240-2.117(1)(B), which provides:

Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery, or affidavits not previously filed that are relied on in the motion....

(emphasis added). Similarly, Missouri Rule of Civil Procedure 74.04(c)(1) provides:

(1) Motions for Summary Judgment. A motion for summary judgment shall summarily state the legal basis for the motion.

A statement of uncontroverted material facts shall be attached to the motion. The statement shall state with particularity in separately numbered paragraphs each material fact as to which movant claims there is no genuine issue, with specific references to the pleadings, discovery, exhibits or affidavits that demonstrate the lack of a genuine issue as to such facts....

...

Movant shall file a separate legal memorandum explaining why summary judgment should be granted.

(emphasis added).

In this case, the enumerated paragraphs of *Staff's Motion for Summary Determination* include both statements of facts as well as legal arguments, in violation of these rules. By non-exhaustive example, paragraphs 10-12 contain statements of law which are in dispute.<sup>1</sup>

In addition, discovery is not closed in this case.<sup>2</sup> Despite this, C-1 has attempted to respond to each asserted statement of undisputed material fact (including the legal arguments) below, as required by 4 CSR 240-2.117(1)(C).

## **I. RESPONSES TO STAFF'S FACTUAL STATEMENTS**

Pursuant to Commission Rule 4 CSR 240-2.117(1)(C), C-1 provides the following response to Staff's factual statements:

1. C-1 admits that Staff filed its Complaint on July 19, 2013, asserting that Respondents entered into territorial agreement in 2007 without seeking the Commission's approval, in violation of § 247.172, RSMo. 2000. C-1 denies that Staff's prayers for relief request

---

<sup>1</sup> Because Staff has conflated its legal argument with its statement of material facts, the Commission should strike *Staff's Motion for Summary Determination*.

<sup>2</sup> C-1 understands why Staff needed to file its *Motion for Summary Determination* when it did in order to comply with the 60-day rule set forth in 4 CSR 240-2.11(1)(A). Nevertheless, discovery is ongoing and the facts are not settled.

that the Commission authorize its General Counsel to seek penalties in circuit court only if Respondents do not seek approval of their territorial agreement.<sup>3</sup>

2. C-1 admits the statements set forth in Paragraph 2.

3. C-1 admits the statements set forth in Paragraph 3.

4. C-1 admits the statements set forth in Paragraph 4.

5. C-1 denies that there are no genuine issues as the material facts set forth in ¶¶ 6 through 27 of *Staff's Motion for Summary Determination*.

6. C-1 admits the statements set forth in Paragraph 6.

7. C-1 admits the statements set forth in Paragraph 7.

8. C-1 admits the statements set forth in Paragraph 8.

9. C-1 admits the statements set forth in Paragraph 9.

10. C-1 denies the statements set forth in Paragraph 10. For the reasons set forth in Respondent's *Joint Motion to Dismiss, Memorandum of Law in Support of Their Joint Motion to Dismiss, Joint Reply to Staff's Response to Motion to Dismiss*, and *Motion for Rehearing*, and *Response to Staff's Reply to Respondents' Denominated Affirmative Defenses in Support of its Motion for Summary Determination* which are incorporated herein by reference, the Commission does not have authority to hear any complaint involving the alleged territorial agreement between Respondents. In addition, as set forth more fully in *C-1's Suggestions in Support of its Answers and Objections to Complainant's Motion for Summary Determination*, Staff has failed to prove that there was an agreement between the Respondents, much less one that constitutes a "territorial agreement" as that term is used in § 247.172 such that the Commission may hear a complaint regarding that alleged agreement.<sup>4</sup>

---

<sup>3</sup> See *Staff's Complaint*, Count I prayer (pg. 3); Count II prayer (pg. 4); Count III prayer (pg. 5).

<sup>4</sup> *Pevely's Answer* ¶ 11; *C-1's Answer* ¶ 11.

11. C-1 denies the statements set forth in Paragraph 11. For the reasons set forth in Respondent's *Joint Motion to Dismiss, Memorandum of Law in Support of Their Joint Motion to Dismiss, Joint Reply to Staff's Response to Motion to Dismiss, Motion for Rehearing* and *Response to Staff's Reply to Respondents' Denominated Affirmative Defenses in Support of its Motion for Summary Determination*, which are incorporated herein by reference, the Commission does not have authority to hear any complaint involving the alleged territorial agreement between Respondents. In addition, as set forth more fully in *C-1's Suggestions in Support of its Answers and Objections to Complainant's Motion for Summary Determination*, Staff has failed to prove that there was an agreement between the Respondents, much less one that constitutes a "territorial agreement" as that term is used in § 247.172 such that the Commission may hear a complaint regarding that alleged agreement.<sup>5</sup>

12. C-1 denies the statements set forth in Paragraph 12. For the reasons set forth in Respondent's *Joint Motion to Dismiss, Memorandum of Law in Support of Their Joint Motion to Dismiss, Joint Reply to Staff's Response to Motion to Dismiss*, and *Motion for Rehearing*, which are incorporated herein by reference, the Commission does not have authority to approve the alleged territorial agreement between Respondents. In addition, as set forth more fully in *C-1's Suggestions in Support of its Answers and Objections to Complainant's Motion for Summary Determination*, Staff has failed to prove that there was an agreement between the Respondents, much less one that constitutes a "territorial agreement" as that term is used in § 247.172 such that the Commission may have any authority to approve that alleged agreement.<sup>6</sup> Finally, Mo. Rev. Stat. §§ 247.160 , 247.165, and 247.170, all contemplate court approval of agreements, including the approval of territorial agreements between public water districts and municipalities in Mo. Rev.

---

<sup>5</sup> *Pevely's Answer* ¶ 11; *C-1's Answer* ¶ 11.

<sup>6</sup> *Pevely's Answer* ¶ 11; *C-1's Answer* ¶ 11.

Stat. § 247.165; accordingly, the Commission does not have exclusive authority to approve territorial agreements.

13. C-1 admits that Respondents provided the answers cited by Staff, but denies that Staff has proven that there was an agreement between the Respondents, much less one that constitutes a “territorial agreement” as that term is used in § 247.172.<sup>7</sup> As set forth more fully in *C-1’s Suggestions in Support of its Answers and Objections to Complainant’s Motion for Summary Determination*, the agreement does not specifically designate any and all powers granted to Pevely to operate beyond its corporate municipal boundaries nor did it displace competition, as required by § 247.172. Staff admits as much in its statement providing that the competition between Respondents has been expensive and prolonged, among other things.<sup>8</sup>

14. C-1 denies the statements set forth in paragraph 14. As set forth more fully in *C-1’s Suggestions in Support of its Answers and Objections to Complainant’s Motion for Summary Determination*, C-1 denies that Staff has proven that there was an agreement between the Respondents, much less one that constitutes a “territorial agreement” as that term is used in § 247.172.<sup>9</sup> The agreement does not specifically designate any and all powers granted to Pevely to operate beyond its corporate municipal boundaries nor does it displace competition, as required by § 247.172. Staff admits as much in its statement providing that the competition between Respondents has been expensive and prolonged, among other things.<sup>10</sup>

15. C-1 admits that it never sought or obtained approval by this Commission of the alleged territorial agreement. For the reasons set forth in Respondent’s *Joint Motion to Dismiss, Memorandum of Law in Support of Their Joint Motion to Dismiss, Joint Reply to Staff’s Response*

---

<sup>7</sup> Pevely’s Answer ¶ 11; C-1’s Answer ¶ 11.

<sup>8</sup> Staff’s Suggestions in Support of its Motion for Summary Determination, pg. 6.

<sup>9</sup> C-1’s Response to Staff’s Data Request No. 4-7, 15-20, 22-26, 29; Pevely’s Answer ¶ 11; C-1’s Answer ¶ 11.

<sup>10</sup> Staff’s Suggestions in Support of its Motion for Summary Determination, pg. 6.

to *Motion to Dismiss*, and *Motion for Rehearing*, which are incorporated herein by reference, the Commission does not have authority to approve the alleged territorial agreement between Respondents. In addition, as set forth more fully in C-1's *Suggestions in Support of its Answers and Objections to Complainant's Motion for Summary Determination*, Staff has failed to prove that there was an agreement between the Respondents, much less one that constitutes a "territorial agreement" as that term is used in § 247.172 such that the Commission may have any authority to approve that alleged agreement.<sup>11</sup>

16. C-1 admits the statements set forth in Paragraph 16.

17. C-1 admits that the C-1 and H & H entered into an agreement providing for H & H's connection to C-1's water system.<sup>12</sup>

18. C-1 admits the statements set forth in Paragraph 18.

19. C-1 admits that H & H never connected to C-1's water system.<sup>13</sup>

20. C-1 admits that H & H was to receive temporary service through Pevely. To the extent that paragraph 20 alleges that Respondents amended their agreement, C-1 denies that this agreement was a modification of an alleged "territorial agreement" subject to § 247.172.<sup>14</sup>

21. C-1 admits that Pevely provided water to Valle Creek. C-1 denies that Pevely's provision of water was a modification of an alleged "territorial agreement" subject to § 247.172.<sup>15</sup>

22. C-1 denies that a "territorial dispute" arose between Respondents as contemplated by § 247.172. For the reasons set forth in Respondent's *Joint Motion to Dismiss, Memorandum of Law in Support of Their Joint Motion to Dismiss, Joint Reply to Staff's Response to Motion to*

---

<sup>11</sup> Pevely's Answer ¶ 11; C-1's Answer ¶ 11.

<sup>12</sup> C-1's Response to Staff's Data Request No. 13.

<sup>13</sup> C-1's Response to Staff's Data Request No. 14.

<sup>14</sup> C-1's Response to Staff's Data Request No. 4-7, 15-20, 22-26, 29; Pevely's Answer ¶ 11; District's Answer ¶ 11.

<sup>15</sup> C-1's Response to Staff's Data Request No. 4-7, 15-20, 22-26, 29; Pevely's Answer ¶ 11; District's Answer ¶ 11.

*Dismiss, Motion for Rehearing* and , which are incorporated herein by reference, the Commission does not have authority to hear any complaint involving the alleged territorial agreement between Respondents. In addition, as set forth more fully in C-1's *Suggestions in Support of its Answers and Objections to Complainant's Motion for Summary Determination*, Staff has failed to prove that there was an agreement between the Respondents, much less one that constitutes a "territorial agreement" as that term is used in § 247.172 such that the Commission may hear a complaint regarding that alleged agreement.<sup>16</sup>

C-1 admits that Pevely's agents or employees removed the meters of C-1 from Valle Creek and installed Pevely's meters at the property but denies that Pevely thereafter billed the owner of Valle Creek for water service.<sup>17</sup>

23. C-1 admits that C-1 filed a lawsuit, which speaks for itself.<sup>18</sup>

24. C-1 denies the statements set forth in Paragraph 24. For the reasons set forth in Respondent's *Joint Motion to Dismiss, Memorandum of Law in Support of Their Joint Motion to Dismiss, Joint Reply to Staff's Response to Motion to Dismiss*, and *Motion for Rehearing*, which are incorporated herein by reference, the Commission does not have authority to hear any complaint involving the alleged territorial agreement between Respondents. In addition, as set forth more fully in C-1's *Suggestions in Support of its Answers and Objections to Complainant's Motion for Summary Determination*, Staff has failed to prove that there was an agreement between the Respondents, much less one that constitutes a "territorial agreement" as that term is used in § 247.172 such that the Commission may hear a complaint regarding that alleged agreement.<sup>19</sup>

25. C-1 admits that sometime in April 2013, agents or employees of C-1 removed

---

<sup>16</sup> C-1's *Response to Staff's Data Request No. 4-7, 15-20, 22-26, 29*; Pevely's *Answer* ¶ 11; C-1's *Answer* ¶ 11.

<sup>17</sup> C-1's *Response to Staff's Data Request No. 26*.

<sup>18</sup> Pevely's *Response to Staff's Data Request No. 27*.

<sup>19</sup> C-1's *Response to Staff's Data Request No. 4-7, 15-20, 22-26, 29*; Pevely's *Answer* ¶ 11; C-1's *Answer* ¶ 11.

Pevely's meters from Valle Creek, replaced them with C-1's meters, and thereafter billed H & H directly for water service.<sup>20</sup>

26. C-1 admits the statements set forth in Paragraph 26.

27. C-1 is without sufficient knowledge or information sufficient to form a belief as to the statements set forth in Paragraph 27.

28. C-1 has responded to *Staff's Reply to Respondents' Denominated Affirmative Defenses in Support of its Motion for Summary Determination* in a separate document filed simultaneously herewith.

WHEREFORE, the Consolidated Public Water Supply District, C-1 of Jefferson County, Missouri prays that the Commission will deny Staff's *Motion for Summary Determination*, and grant such other and further relief as the Commission deems just.

Respectfully submitted,

/s/ Bianca L. Eden

Bianca L. Eden

#50301

WEGMANN LAW FIRM

P.O. Box 740

455 Maple Street

Hillsboro, MO 63050

(636) 797-2665 or 296-5769

[beden@wegmannlaw.com](mailto:beden@wegmannlaw.com)

Attorneys for Respondent Consolidated Public  
Water Supply District C-1 of Jefferson County,  
Missouri

---

<sup>20</sup> C-1's Response to Staff's Data Request No. 29.



## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was mailed by U.S. Mail on this 25<sup>th</sup> day of April, 2014, unless served electronically via EFIS to:

Kevin A. Thompson  
Chief Staff Counsel  
Attorney for the Staff of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
[amy.moore@psc.mo.gov](mailto:amy.moore@psc.mo.gov)

Office of Public Counsel  
P.O. Box 2230  
200 Madison Street  
Suite 650  
Jefferson City, MO 65102  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

Terrence J. Good  
LASHLY & BAER, P.C.  
714 Locust Street  
St. Louis, Missouri 63101  
[tjgood@lashlybaer.com](mailto:tjgood@lashlybaer.com)  
Attorneys for Respondent City of Pevely, Missouri

/s/ Bianca L. Eden\_\_\_\_\_