

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 19th
day of March, 1996.

In the matter of the application of U.S. Water/Lexington,)
Missouri, Inc., for approval of agreement with the City)
of Lexington, Missouri, relating to discontinuance of) Case No. WO-96-115
water service because of delinquent sewer charges.)
)

**ORDER GRANTING APPLICATION FOR APPROVAL OF
TERMINATION OF WATER SERVICE AGREEMENT**

On October 12, 1995, U.S. Water/Lexington, Missouri, Inc. (U.S. Water) filed an application pursuant to Section 393.015, RSMo 1994, seeking approval of the Commission of a Termination Of Water Service Agreement negotiated with the City of Lexington, Missouri (City), which would allow the City to arrange with U.S. Water to have the water service of the City's sewer customers discontinued when those customers were delinquent in the payment of their sewer bills to the City. U.S. Water also sought to amend its tariff to implement the Termination Of Water Service Agreement.

On January 16, 1996, the Commission issued an Order Denying Application For Approval Of Termination Of Water Service Agreement. The Commission in its order expressed reservations concerning the indemnification provisions found in the agreement, and concluded, "[t]he Commission believes that it is not appropriate to approve an agreement under which a regulated water corporation assumes a risk of potential liability in the course of providing a service at cost to a municipality operating a sewer treatment facility." Order Denying Application For Approval Of Termination Of Water Service Agreement, Case No. WO-96-115 at 4. In addition, the Commission also stated that contract language "which provides greater exposure to liability than apparently

contemplated by Section 393.015, RSMo 1994, is unwarranted and inappropriate."

Id. The Commission did indicate, however, that "[i]n the event U.S. Water and the City can agree on a termination of water service agreement similar to the instant agreement, but which contains indemnity provisions addressing the Commission's concerns, the Commission would be amenable to approval thereof."

Id. at 5.

On February 21, 1996, U.S. Water filed an amended application with a new agreement, denominated as a Termination Of Water Service Agreement, and a copy of Ordinance No. 95-34, authorizing the City of Lexington to enter into the amended contract with U.S. Water. Both the new agreement and the ordinance are attached to the amended application as exhibits. At the same time U.S. Water also submitted a tariff sheet designed to implement the contract with the City, with an effective date of March 21, 1996, which was subsequently extended to March 25, 1996.

No party to this case has requested a hearing and the Commission concludes that no hearing is necessary in this case, and will base its decision upon the verified application and attachments, and the recommendation of Staff. ***State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission***, 776 S.W.2d 494, 496 (Mo.App. 1989).

U.S. Water is a water corporation and public utility as defined in Section 386.020, RSMo 1994, and is engaged in providing water utility services in its service area, which includes the City of Lexington, Missouri. The City of Lexington, Missouri, is a municipality organized and existing under the laws of the state of Missouri, and is located within Lafayette County, Missouri. The City owns and operates a sewage collection and treatment facility for sewage and waste materials generated by the public within the City of Lexington, Missouri, and near its boundary.

On March 13, 1996, the Staff filed a memorandum recommending approval of the Termination Of Water Service Agreement. Staff states that the new agreement makes a specific reference to the state statute authorizing this type of arrangement, namely Section 393.015.2, RSMo 1994, in addressing indemnification of the Company by the City. Staff notes that any claimed lack of indemnification would not automatically terminate the agreement as with similar contracts the Commission has approved; however, the Company has the ability to terminate the agreement on 30 days' notice if it chooses. In addition, Staff indicates that a member of the City Council of Lexington has called the Consumer Services Department at the Commission on two different dates, expressing dislike of the agreement. However, nothing further has been heard nor any correspondence received from this one member. Staff notes that attached to the agreement is a copy of a city ordinance approving the agreement. Staff states that it has reviewed the agreement and is of the opinion that it satisfies the concerns raised by the Commission in its previous order.

With regard to the tariff sheet submitted by U.S. Water, Staff states that the proposed tariff sheet was filed to modify the Company's tariff on Discontinuance of Service by adding a statement pertaining to the discontinuance of service pursuant to the terms of a contract between the Company and a sewer corporation, municipality, or sewer district. The tariff also references the state statute authorizing such a contract. Staff recommends that this tariff sheet be approved.

Upon review of the verified application and attachments, and Staff's recommendation, the Commission finds that the Termination Of Water Service Agreement should be approved. The new Termination Of Water Service Agreement is very similar to the agreement filed with the original application. Both agreements contain provisions for appropriate notification of the City's sewer customers, and monetary compensation to U.S. Water for the cost of

disconnections, reconnections, and lost water revenues. However, the indemnification provision in the new agreement has been amended, and now specifically references Section 393.015.2, RSMo 1994. The Commission finds that the new indemnification language satisfies the concerns raised by the Commission in its order denying approval of the original agreement. The Commission also finds the Termination Of Water Service Agreement to be reasonable and in the public interest.

The Commission has also reviewed the proposed tariff sheet submitted with the amended application. The Commission notes that the tariff language is clear and succinct. Thus, the Commission finds the proposed tariff sheet to be appropriate and reasonable. However, the Commission must note that dated tariffs should not have been filed prior to the Commission's issuance of an order approving the agreement. If Applicant wished the Commission to review the tariff language in its order of approval, it should have submitted an undated illustrative tariff.

IT IS THEREFORE ORDERED:

1. That the amended application of U.S. Water/Lexington, Missouri, Inc. for approval of the Termination Of Water Service Agreement attached as an exhibit to the amended application is hereby granted.

2. That the tariff sheet submitted by U.S. Water/Lexington, Missouri, Inc. is hereby approved to become effective on or after March 25, 1996:

P.S.C. MO. No. 1

First Revised Sheet No. 15 cancelling Original Sheet No. 15.

3. That this order shall become effective on March 25, 1996.

BY THE COMMISSION

(S E A L)

Zobrist, Chm., McClure, Kincheloe,
Crumpton and Drainer, CC., Concur.



David L. Rauch
Executive Secretary