

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY**

**May 15, 2001**

**CASE NO: WO-2001-441**

**Office of the Public Counsel**  
P.O. Box 7800  
Jefferson City, MO 65102

**Charles Brent Stewart**  
Stewart & Keevil, L.L.C.  
1001 Cherry Street, Suite 302  
Columbia, MO 65201

**General Counsel**  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**Dean L. Cooper**  
Brydon, Swearingen & England P.C.  
312 East Capitol Avenue  
Jefferson City, MO 65102

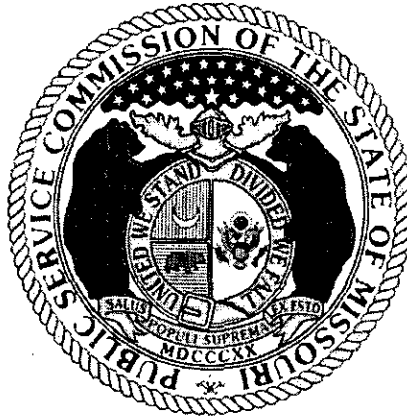
**Enclosed find certified copy of a REPORT and ORDER in the above-numbered case(s).**

**Sincerely,**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of the Application of Missouri- )  
American Water Company and the Public Water )  
Supply District No. 2 of St. Charles County, )  
Missouri, for Approval of a Territorial )  
Agreement Concerning Territory in St. Charles )  
County, Missouri. )

Case No. WO-2001-441

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**REPORT AND ORDER**

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**Issue Date:**

May 15, 2001

**Effective Date:**

May 25, 2001

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the Matter of the Application of Missouri- )  
American Water Company and the Public Water )  
Supply District No. 2 of St. Charles County, ) Case No. WO-2001-441  
Missouri, for Approval of a Territorial )  
Agreement Concerning Territory in St. Charles )  
County, Missouri. )

**APPEARANCES**

Dean L. Cooper, Brydon, Swearngen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65012, for Missouri-American Water Company.

Charles Brent Stewart, Stewart & Keevil, LLC, 1001 East Cherry Street, Suite 302, Columbia, Missouri 65201-7931, for Public Water Supply District No. 2 of St. Charles County, Missouri.

Keith R. Krueger, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

**REGULATORY LAW JUDGE:** Vicky Ruth.

**REPORT AND ORDER**

**Procedural History**

Missouri-American Water Company (MAWC) and the Public Water Supply District No. 2 of St. Charles County, Missouri (Water District), (collectively referred to as "Applicants"), filed a joint application on February 13, 2001, in accordance with Section 247.172, RSMo 2000, 4 CSR 240-2.060(13), and 4 CSR 240-51. Applicants request Commission approval

of a territorial agreement, which is attached to this Report and Order as Attachment A.<sup>1</sup>

The Commission issued an Order and Notice on February 23, 2001, directing parties wishing to intervene in this case to do so by March 15, 2001. No applications to intervene were filed. The parties filed a proposed procedural schedule on March 26, 2001. On April 5, 2001, the Commission issued an Order Adopting Procedural Schedule. That order provided that a hearing would be held on May 1, 2001.

On April 16, 2001, MAWC, Water District, the Office of the Public Counsel (Public Counsel), and the Staff of the Missouri Public Service Commission (Staff) filed a Unanimous Stipulation and Agreement. A copy of the Unanimous Stipulation and Agreement is attached to this order and incorporated herein as Attachment B.

The Commission held an evidentiary hearing on May 1, 2001. Although Public Counsel was not excused from attending the hearing, Public Counsel did not appear. All other parties were represented.

### Discussion

MAWC is a Missouri corporation duly organized and existing under the laws of the state of Missouri with its principal office and place of business located 535 North New Ballas Road, St. Louis, Missouri 63141. MAWC provides water service to the public and is a "water corporation"

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<sup>1</sup> The attachments to the territorial agreement include: a certified copy of the Company's Certificate of Good Standing issued by the Missouri Secretary of State's office, maps showing the Public water Supply District No. 2 Service Area as Established by Territorial Agreement and showing the MAWC Service Area as Established by Territorial Agreement, an illustrative tariff reflecting the change to MAWC's tariffs which would be necessary as a result of the agreement, and a legal description designating the boundaries of the agreement. These attachments are not attached to this order due to their size, but are in the official case file available for public inspection.

and "public utility" as defined in Section 386.020(58) and (42), RSMo 2000.

The Water District is a public water supply district organized and existing under Chapter 247, RSMo 2000, with its principal office and place of business located at 100 Water Drive, O'Fallon, Missouri 63366. The Water District currently provides water service at retail and at wholesale to customers located in Water District's water service area in and around St. Charles County and Warren County, Missouri.

Applicants are subject to the Commission's jurisdiction for purposes of this territorial agreement under the provisions of Section 247.172, RSMo.

Applicants jointly applied for approval of a territorial agreement that would designate the boundaries of the water service areas of each of the applicants. The territorial agreement also sets out the powers that each applicant grants to the other to operate within their respective boundaries. The territorial agreement does not require the transfer of any existing customers between the Applicants.

Before approving the proposed territorial agreement, the Commission must determine that it is not detrimental to the public interest. The first factor the Commission will consider in deciding the appropriateness of this territorial agreement is the extent to which the agreement eliminates or avoids unnecessary duplication of facilities. Dale Johansen, Manager of the Water and Sewer Department at the Public Service Commission, testified at the hearing that the Agreement will preclude any wasteful and costly duplication of facilities and services in the areas that are the subject of the Agreement.

Second, the Commission will consider the ability of each party to the territorial agreement to provide adequate service to the customers in its exclusive service area. Mr. Johansen testified that each of the parties to the Agreement have the ability and the facilities necessary to provide safe and adequate service to the customers in the service areas that are the subject of the Agreement.

The third area for Commission concern is the effect of approval of the territorial agreement on customers of the applicants. Mr. Johansen testified that it was his opinion that Commission approval of the Agreement would not be detrimental to the public interest. Mr. Johansen stated that no existing customers will experience a change in their water service provider as a result of implementation of this agreement, as the Agreement affects only new customers.

Fourth, the Commission will consider a category of other cost and safety benefits attributed to the proposed territorial agreement. At the hearing, Mr. Johansen indicated that the agreement will preclude destructive competition between MAWC and the Water District, to the benefit of their customers.

### **Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider

relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

The Commission finds that approval of the territorial agreement signed by MAWC and Water District will avoid future duplication of facilities. The Commission finds that the Applicants are capable of adequately and safely providing the water supply, service, and maintenance needs of the customers in their service areas as designated in the proposed agreement. The Commission further finds that the overall effect of the proposed agreement would not be harmful to ratepayers, that the agreement would promote efficiency.

### **Conclusions of Law**

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Missouri Public Service Commission has jurisdiction over the territorial agreement between the Water District and MAWC as specified in Section 247.172, RSMo 2000.

The Commission may approve a territorial agreement if the agreement in total is not detrimental to the public interest. Section 247.172, RSMo. Based on the findings of fact it has made, the Commission concludes that the territorial agreement proposed by MAWC and the Water District is not detrimental to the public interest and should be approved.

#### **IT IS THEREFORE ORDERED:**

1. That the Territorial Agreement attached to this order as Attachment A between Missouri-American Water Company and Public Water Supply District No. 2 of St. Charles County, Missouri, is approved.

2. That the Unanimous Stipulation and Agreement of the parties is approved.

3. That no more than 30 days after the effective date of this order, Missouri-American Water Company shall file revised tariff sheets in compliance with the territorial agreement approved in Ordered Paragraph No. 1.

4. That this Report and Order shall become effective on May 25, 2001.

BY THE COMMISSION



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Vicky Ruth, Regulatory Law Judge,  
by delegation of authority  
pursuant to Section 386.240,  
RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 15th day of May, 2001.



**TERRITORIAL AGREEMENT**

This Agreement made and entered into this 4th day of October, 2000 by and between Public Water Supply District No. 2 of St. Charles County, Missouri (hereinafter the "District") and Missouri-American Water Company (hereinafter the "Company").

Whereas, the District is a political corporation of the State of Missouri located in St. Charles and Warren Counties organized and existing under Sections 247.010 to 247.220 RSMo. for the purpose of providing conveniences in the use of water, ample in quantity for all needful purposes and pure and wholesome in quality, furnished from common sources of supply to many inhabitants of the District now denied such privileges thereby promoting public health and sanitation, and making available conveniences not otherwise possible for the general public welfare; and

Whereas, the Company is a corporation of the State of Missouri and is a water corporation as defined by Chapter 386 RSMo. and is authorized to sell and distribute water subject to regulation by the Missouri Public Service Commission ("PSC"); and

Whereas, the District's and the Company's boundaries are not coequal but do overlap in certain portions of their respective areas; and

Whereas, Section 247.172 RSMo. provides that competition to sell and distribute water, as between and among public water supply districts and water corporations subject to Missouri Public Service Commission jurisdiction may be displaced by written territorial agreements upon approval of the Missouri Public Service Commission; and

Whereas, the District and the Company desire to enter into this Agreement in order to avoid wasteful duplication of facilities, stranded investment and underutilized

APPENDIX 2

system capacity and to allow orderly development, efficient planning for water system expansion and improvement, effective utilization of existing and future system capacity, efficient service and to minimize disputes which may result in higher costs in serving each party's respective inhabitants.

Now, Therefore, in consideration of the mutual covenants, conditions, obligations, promises, restrictions and agreements herein contained, the District and the Company agree as follows:

1. For purposes of this Agreement the following terms shall have the following meaning:

- a. Company: Missouri-American Water Company.
- b. Customer: includes any natural person, firm, association, partnership, business trust, public or private corporation, political subdivision or any agency, board, department or bureau of the State of Missouri or the U.S. Government or any other legal entity which has requested or is receiving water service. Any customer who has requested or is receiving water service at more than one structure shall be a new and different customer at each structure at which water service has been requested.
- c. Customer service lines: includes all water service lines from the water main to the customer.
- d. District: Public Water Supply District No. 2 of St. Charles County, Missouri
- e. Service: shall mean water supply service to a customer.
- f. Structure: shall mean an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus. A "structure" shall include an original structure and any contiguous addition to or expansion thereto and a replacement of a previously existing structure.

2. The District shall have the exclusive right to provide service to all existing and future customers located within its service area as shown on Exhibit A.

3. The Company shall have the exclusive right to provide service to all existing and future customers located within its service area shown on Exhibit B.

4. Neither party may furnish, make available, render or extend service to a structure or customer or for use within the territory of the other party either directly, indirectly or through another entity controlled by the party or controlling the party, in whole or in part, excepting sales to each other.

5. The location of a structure or customer for purposes of this Agreement shall be the geographical location at which service is actually used, regardless of the metering point or point of delivery. The first owner of a new structure who requests and receives service at a structure which is located on or crossed by any mutual boundary line described in Paragraphs 2 and 3 dividing the service territories of the parties shall be permitted to choose either party for permanent service. Thereafter that party shall exclusively serve that structure.

6. The parties may agree on a case-by-case basis by an Addendum hereto to allow a structure to receive service from one party though the structure is located in the service area of the other.

Such Addendum referred to above shall be filed with the Executive Secretary of the Missouri Public Service Commission in the same manner as a motion or other pleading, with a copy submitted to the Office of Public Counsel.

Each Addendum shall consist of a notarized statement identifying the structure, the party to serve the structure and the justification for the Addendum and indicating that the parties support the Addendum.

Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served which acknowledges such customer's receipt of notice of the contemplated service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the Public Service Commission and shall indicate the customer's consent to be served by the Party contemplated by the Addendum.

If the Staff of the Public Service Commission or Office of Public Counsel do not submit a pleading objecting to the Addendum within forty-five (45) days of the filing thereof, the Addendum shall be deemed approved by the aforesaid parties. However, if a pleading in opposition to the Addendum is filed by the above listed parties, the Commission shall schedule an evidentiary hearing at the earliest reasonable opportunity to determine whether the Addendum should be approved. Each Addendum shall contain a statement in bold uppercase typeface indicating that the Staff or Office of Public Counsel has forty-five (45) days to oppose the Addendum or else the Addendum shall be deemed approved by the aforesaid parties.

Each party, pursuant to an executed Addendum, shall have the right to provide temporary service until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an Addendum until the effective date of an Order of the Commission or a court regarding the removal of same.

7 This Agreement shall become effective upon approval by the Missouri Public Service Commission pursuant to Section 247.172 RSMo. The term of this Agreement shall be thirty (30) years. Performance of the parties is contingent upon all of the following having occurred no later than March 1, 2001, unless such condition is

waived, extended or modified by agreement in writing signed by an officer of each party hereto:

a: All required approvals of the Company's Board of Directors or parent corporation.

b: All required approvals of the District's Board of Directors.

c: Approval of the transaction by the Public Service Commission of Missouri.

8. The parties agree to undertake all actions reasonably necessary to implement this Agreement. The parties also agree to share the cost of filing an application for approval of this Agreement, the cost of transcript fees, and other costs. Each party shall bear their own attorney's fees.

9. In the event any controversy or claim by or against either party arises out of this transaction or the subject matter hereof after the effective date of this Agreement, each party shall make available to the other copies of such relevant records as may reasonably be requested pertaining to the controversy or claim.

10. If either party shall default in their performance under this Agreement or in the event of a breach of this Agreement, which default or breach results in the expenditure of attorney's fees to enforce the terms of this Agreement or to recover damages for breach of this Agreement, then the prevailing party shall receive their reasonable and actually incurred attorney's fees and costs in addition to any other damages recovered. In the event of a breach or threatened breach by either party the other party shall be entitled to seek an injunction restraining the breach or threatened breach in addition to any other remedies available at law or in equity.

11. If the Public Service Commission of Missouri does not approve the provisions of this Agreement, then it shall be nullified and of no legal effect between the parties. Further, if any part of this Agreement is declared invalid or void by a Court or agency of competent jurisdiction, then the whole Agreement shall be deemed invalid and void.

12. Neither the boundaries described by this Agreement nor any term of this Agreement may be modified, repealed or changed except by a writing mutually approved by the respective parties and by the Missouri Public Service Commission.

13. This Agreement shall be binding on the parties and all successors, assigns, parent corporations or affiliates of the Company and the District.

14. This Agreement shall in no way affect either party's right to construct such collection, distribution, treatment, storage, pumping, production and transmission facilities within the designated service area of the other as that party deems necessary, appropriate or convenient to provide service to its customers not inconsistent with the terms of this Agreement and as otherwise allowed by law. This Agreement shall in no way affect either party's right to construct, operate, maintain and repair such sanitary sewer collection and sanitary treatment facilities within the designated service area of the other as that party deems necessary, appropriate or convenient to provide sanitary sewer service to its customers as allowed by law.

15. This Agreement constitutes the entire agreement between the parties relating to the allocation of water service rights in the territory described herein.

IN WITNESS WHEREOF, the parties have executed this agreement this 4<sup>TH</sup>  
day of OCTOBER, 2000.

PUBLIC WATER SUPPLY DISTRICT  
NO. 2 OF ST. CHARLES COUNTY,  
MISSOURI

By: Catherine Cobb  
Catherine Cobb, President

ATTEST:

Mike Dougherty  
Mike Dougherty, Clerk

MISSOURI-AMERICAN WATER  
COMPANY

By: Dennis R. Wingertsahn  
Dennis R. Wingertsahn  
Vice President - Operations

ATTEST:

Robert D. Maul  
Robert D. Maul  
Assistant Secretary

STATE OF MISSOURI            )  
  ) SS:  
COUNTY OF St Charles        )

On this 14<sup>th</sup> day of October, 2000, before me appeared **Catherine Cobb** to me personally known, who, being by me duly sworn, did say that she is the President of **Public Water Supply District No. 2 of St. Charles County, Missouri**, and that the seal affixed to the foregoing instrument is the corporate seal of said **District**, and that said instrument was signed and sealed on behalf of said **District**, by authority of its Board of Directors; and said **Catherine Cobb** acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Kim Cantrell  
Notary Public

My term expires:

June 20, 2004

KIM CANTRELL  
NOTARY PUBLIC - NOTARY SEAL  
STATE OF MISSOURI  
ST. CHARLES COUNTY  
MY COMMISSION EXPIRES: JUNE 20, 2004

STATE OF MISSOURI            )  
  ) SS:  
COUNTY OF ST. LOUIS        )

On this 26<sup>th</sup> day of September, 2000, before me appeared **Dennis R. Wingertsahn** to me personally known, who, being by me duly sworn, did say that he is the Vice President - Operations of **Missouri-American Water Company**, and that the seal affixed to the foregoing instrument is the corporate seal of said **Company**, and that said instrument was signed and sealed on behalf of said **Company**, by authority of its Board of Directors; and said **Dennis R. Wingertsahn** acknowledged said instrument to be the free act and deed of said **Company**.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Staci A. Olsen  
Notary Public

My term expires:

Staci A. Olsen, Notary Public  
County Of St. Louis, State Of Missouri  
My Commission Expires March 20, 2001



BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

FILED<sup>2</sup>

APR 16 2001

Missouri Public  
Service Commission

In the Matter of the Joint Application of )  
Missouri-American Water Company and )  
the Public Water Supply District No. 2 )  
of St. Charles County, Missouri for )  
Approval of a Territorial Agreement )  
Concerning Territory in St. Charles )  
County, Missouri. )

Case No. WO-2001-441

UNANIMOUS STIPULATION AND AGREEMENT

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), Missouri-American Water Company ("MAWC" or "Company"), the Public Water Supply District No. 2 of St. Charles County, Missouri ("Water District"), and the Office of the Public Counsel ("OPC"), and for their Unanimous Stipulation and Agreement ("Stipulation") stipulate and agree as follows:

1. On October 4, 2000, the Water District and MAWC ("Applicants") executed a Territorial Agreement pursuant to Section 247.172, RSMo 2000. On February 13, 2001, the Applicants filed with the Missouri Public Service Commission ("Commission") a Joint Application for Approval of Territorial Agreement. Concurrent with the filing of this Joint Application, the Applicants submitted the required filing fee to the Commission. Thereafter, on February 23, 2001, the Commission issued an Order and Notice which required that notice of this proceeding be given to the County Commission of St. Charles County, the members of the General Assembly representing the Applicants' service areas and the newspapers that serve the Applicants' service areas. The Commission's Order set an intervention deadline date of March 15, 2001. The Order and Notice also ordered the Applicants, OPC and the Staff to file a proposed procedural schedule by no later than March 26, 2001, with a hearing to be held no later

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than May 11, 2001.

2. No requests for intervention in the case were received by the intervention deadline date, nor have any late-filed requests for intervention been received.

3. On March 26, 2001, the Staff, on its own behalf and on behalf of the Water District, the Company and the OPC, filed a Proposed Procedural Schedule as directed by the Commission's Order and Notice. The proposed schedule stated that the parties would file a stipulation and agreement by no later than April 16, 2001, and it requested that the required evidentiary hearing be held on May 1, 2001.

4. On April 5, 2001, the Commission issued an Order Adopting Procedural Schedule wherein it scheduled an evidentiary hearing in this case for May 1, 2001, beginning at 1:30 p.m.

5. Since the Territorial Agreement will only apply to new customers of the Water District and the Company, it was not necessary for the Applicants to attach a listing of customers affected by the Territorial Agreement to the Joint Application.

6. The Territorial Agreement designates the boundaries of the respective water service areas of the Water District and the Company, as set forth in Appendix 4 attached to the Territorial Agreement.

7. The Territorial Agreement specifies any and all powers granted to the Water District by the Company to operate within the Company's certificated service area. The Territorial Agreement specifies any and all powers granted to the Company by the Water District to operate within the boundaries of the Water District.

8. The Territorial Agreement will enable the Applicants to avoid wasteful and costly duplication of water utility services within the affected service areas and will displace destructive competition between the Applicants, all to the benefit of the Applicants' respective customers.

9. The Joint Application acknowledges that the Territorial Agreement in no way affects or diminishes the rights and duties of any water supplier that is not a party to the Territorial Agreement to provide service within the boundaries designated in the Territorial Agreement.

10. The Parties agree that the Territorial Agreement meets the requirements of Section 247.172, RSMo 2000. The Parties further agree that the Territorial Agreement is not detrimental to the public interest and that the Commission should so find.

11. The Parties agree that the testimony to be provided at the evidentiary hearing for this case will be limited to the Staff calling one witness to provide testimony in support of the Joint Application, the Territorial Agreement and this Stipulation, unless otherwise requested by the Commission in advance of the hearing. The Applicants will, however, have representatives available at the evidentiary hearing to answer questions from the Commission and the presiding officer.

12. This Stipulation has resulted from negotiations among the Parties and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the Parties to take other positions in other proceedings.

13. Inasmuch as there will be an evidentiary hearing in this case, as required by statute, the Staff shall only submit a memorandum explaining its rationale for entering into this Stipulation if the Commission requests such a memorandum in advance of the evidentiary hearing for this case. Each Party to the case shall be served with a copy of any such

memorandum and shall be entitled to submit to the Commission, within five business days of receipt of Staff's memorandum, a responsive memorandum that shall also be served on all parties. All memoranda submitted to the Commission under the terms of this paragraph shall be considered privileged in the same manner as are settlement discussions under the Commission's rules and shall thus be maintained on a confidential basis by all Parties. Such memoranda shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding, whether or not the Commission approves and adopts this Stipulation. The contents of any memorandum submitted to the Commission under the terms of this paragraph by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation, whether or not the Commission approves and adopts this Stipulation.

14. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

15. As noted above, the Staff will provide its testimony in support of the Joint Application, the Territorial Agreement and this Stipulation at the evidentiary hearing scheduled for May 1, 2001.

**WHEREFORE**, the parties respectfully request that the Commission issue its Order approving the Joint Application, the Territorial Agreement and this Stipulation.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

Charles Brent Stewart by dlc  
Charles Brent Stewart MO Bar No. 34885  
Stewart & Keevil, L.L.C.  
1001 Cherry Street, Suite 302  
Columbia, MO 65201  
573-499-0635 (telephone)  
573-499-0638 (facsimile)  
[Stewart499@aol.com](mailto:Stewart499@aol.com)

Attorney for the Water District

Keith R. Krueger by dlc  
Keith R. Krueger MO Bar No. 23857  
Deputy General Counsel  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
573-751-4140 (telephone)  
573-751-9285 (facsimile)  
[kkrueg01@mail.state.mo.us](mailto:kkrueg01@mail.state.mo.us) (e-mail)

Attorney for the Staff of the  
Missouri Public Service Commission

M. Ruth O'Neill by dlc  
M. Ruth O'Neill MO Bar No. 49456  
Assistant Public Counsel  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102  
573-751-1304 (telephone)  
573-751-5562 (facsimile)  
[roneill1@mail.state.mo.us](mailto:roneill1@mail.state.mo.us)

Attorney for the Office of the Public Counsel

Dean L. Cooper  
Dean L. Cooper MO Bar No. 36592  
BRYDON, SWEARENGEN & ENGLAND  
P.O. Box 456  
312 E. Capitol Avenue  
Jefferson City, MO 65102-0456  
573-635-7166 (telephone)  
573-635-3847 (facsimile)  
[dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)

Attorneys for MAWC

### Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 16<sup>th</sup> day of April 2001.

Dean L. Cooper

FYI: To Be Issued By Delegation

ALJ/Secretary: Ruth Pope

Date Circulated 5-9 Return by 5-16  
10am

CASE NO. MO-2001-441

*DR*

*AD*  
Lumpke, Chair

\_\_\_\_\_  
Drainer, Vice Chair

*mm*  
Murray, Commissioner

*KS*  
Simmons, Commissioner

*GP*  
Gaw, Commissioner

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 15<sup>th</sup> day of May 2001.



*Dale Hardy Roberts*  
Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge