

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

In the matter of the Application of	)	
The Meadows Water Company, North	)	
Suburban Public Utility Company	)	
and the City of Willard, Missouri	)	
for an order authorizing the Sale,	)	Case No. WO-2007-0424
Transfer and Assignment of Water and	)	
Sewer Assets to the City of Willard	)	
and in connection therewith	)	
certain other related transactions.	)	

**APPLICANTS' SUGGESTIONS OPPOSING  
APPLICATION TO INTERVENE**

Come now The Meadows Water Company (The Meadows), North Suburban Public Utility Company (North Suburban) and the City of Willard, Missouri (sometimes collectively referred to as "Applicants") and respectfully suggest that the Commission deny the application to intervene filed by the City of Springfield (Springfield) on May 23, 2007. In support thereof, Applicants submit the following:

1. The applicable rule is 4 CSR 240-2.075 which provides in pertinent part that

(4) The commission may on application permit any person to intervene on a showing that----

(A) The proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

2. This rule is not unlike Rule 52.12 (a)(2) of the Missouri Rules of Civil Procedure.

The requirements for intervention under Rule 52.12(a)(2) were explained in *Flippin v. Coleman Trucking, Inc.* 18 S.W.3d 17, 20 -21 (Mo.App. E.D. 2000):

In Missouri, to intervene as a matter of right under Rule 52.12(a)(2), three requirements must be met: 1) would-be intervenor must show interest in the subject matter, 2) would-be intervenor must show that disposition of the action may impede its ability to protect that interest, and 3) that its interest are [sic] not adequately represented by existing parties. [citation omitted] The trial court may deny the motion to intervene if any one of these requirements is not met. [citation omitted]

The “interest” in question “means a direct and immediate claim to, and having its origin in, the demand made or proceeds sought or prayed by one of the parties to the original action ... [T]he ‘interest’ must be such an immediate and direct claim upon the very subject matter of the action that intervenor will either gain or lose by the *direct operation* of the judgment that may be rendered therein.” *Whitehead v. Lakeside Hosp. Ass’n*, 844 S.W.2d 475, 479 (Mo.App. W.D.1992) (quoting *State ex rel. Farmers Mut. Auto. Ins. Co. v. Weber*, 364 Mo. 1159, 273 S.W.2d 318, 321 [4] (banc 1954)). [emphasis original]

3. The instant case concerns an application for permission to sell regulated utility assets to a municipal corporation. The applicable standard at this Commission is whether the proposed sale will be detrimental to the public interest. 4 CSR 240-3.310(1)(D) (applying to sewer corporations) and 4 CSR 240-3.605(1)(D) (applying to water corporations). Springfield’s application to intervene should not only be judged on whether it has identified the immediate and direct interest expected under the Commission’s intervention rules, but also whether that interest, whatever it may be, foreshadows any conceivable detriment to the public interest. Applicants contend that Springfield’s application fails to pass muster under these elements of analysis and should be denied.

4. On pages 2-4 of its application, Springfield pleads that it 1) owns an airport facility bordering on the certificated area of The Meadows; 2) owns property used by the airport inside The Meadows’ certificated area; 3) has water and sewer assets serving customers in The Meadows’ certificated area; 4) has an agreement with the City of Willard to provide sewage treatment services; 5) owns infrastructure improvements in The Meadows’ certificated area; 6) is

a party to an Urban Service Area Policy agreement; and 7) is committed to building new trunk sewers and other improvements in The Meadows' certificated area.

5. Nowhere in the body of the application can it be found or determined that any of the seven "interests" Springfield enumerates will be affected in the least by a sale of assets from the regulated company to the City of Willard. Quite to the contrary, when title to the inventoried assets vests in the City of Willard (or for that matter if title were to vest in any willing buyer), Springfield can continue its activities as described on pages 2-4 unabated.<sup>1</sup>

6. Springfield does not claim that it is customer of any regulated Applicant. Springfield makes no claim on the assets proposed for transfer. Pages 2-4 list a series of activities typical of major municipal corporations but none directly involve a sale of the regulated assets involved in this matter. If anything, Springfield has identified issues it may wish to raise with the City of Willard post closing but these are entirely intergovernmental matters not engaging the regulatory powers of the Commission.<sup>2</sup>

7. True, Springfield is not a member of the general public, but it has failed to show an interest that will be adversely affected by a change in ownership of The Meadows' and North Suburban's property. Absent such a showing, Applicants contend that public interest would not be served by allowing Springfield the right of a party intervenor in this case.

WHEREFORE, Applicants pray the Commission deny Springfield's application to intervene.

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<sup>1</sup> Sale of the assets bears no relationship to the matters set out on pages 2-4 of Springfield's application. The airport will continue to terminate air traffic, Springfield can continue its ownership of real and personal property at the airport and anywhere else; it can continue to operate its water and sewer systems and serve its own water and sewer customers wherever they may be located; it can abide by the terms of agreements or policy treaties with the City of Willard, other municipalities, or county governments; and can maintain its commitments to its own infrastructure improvements while the City of Willard owns the assets to be sold by the regulated applicant. Nothing in Springfield's application to intervene portrays a different outcome.

<sup>2</sup> The exception is the issue of Springfield's admitted encroachment into The Meadows' certificated territory, which supplies no justification for intervention. Justice and equity would not confer upon a trespasser in certificated territory the right to achieve intervenor status.

Respectfully submitted,

**/s/ Mark W. Comley**

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ATTORNEYS FOR THE CITY OF WILLARD, MISSOURI

TOGETHER, THE JOINT APPLICANTS

**Certificate of Service**

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 1<sup>st</sup> day of June, 2007, to General Counsel's Office at [gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov); Office of Public Counsel at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov) ; Charles Brent Stewart at [Stewart499@aol.com](mailto:Stewart499@aol.com); and Howard C. Wright, Jr., at [hwright@ci.springfield.mo.us](mailto:hwright@ci.springfield.mo.us).

**/s/ Mark W. Comley**