

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

In the Matter of the Joint Application of)
Public Water Supply District No. 3 of)
Franklin County, Missouri, and the City of)
St. Clair, Missouri, for Approval of a Water)
Service Territorial Agreement in Franklin)
County, Missouri.)

CASE NO. WO-2006-0488

UNANIMOUS STIPULATION AND AGREEMENT

COME NOW the Staff of the Missouri Public Service Commission ("Staff"), Public Water Supply District No. 3 of Franklin County, Missouri ("District"), the City of St. Clair, Missouri ("City") and the Office of the Public Counsel ("OPC") (collectively, "the Parties"), and for their Unanimous Stipulation and Agreement ("Stipulation") state the following to the Missouri Public Service Commission ("Commission").

PROCEDURAL HISTORY

1. On May 22, 2006 (unless noted otherwise, all dates herein refer to the year 2006), the District and the City (sometimes referred to as "the Joint Applicants") executed a Territorial Agreement concerning their respective water and sanitary sewer service territories in and around the City of St. Clair, pursuant to the provisions of Section 247.172, RSMo.

2. On June 21, the District and the City filed a Joint Application for Approval of a Water and Sanitary Sewer Service Area Territorial Agreement ("Joint Application") seeking the Commission's approval of the above-referenced Territorial Agreement, as is required by Section 247.172, RSMo, pursuant to the provisions of Commission Rules 4 CSR 240-3.625 and 4 CSR 240-3.630.

3. On June 22, the Commission issued its **Order Directing Notice, Establishing Time for Filing Recommendations, Setting Date for Submission of Intervention Requests**

and Setting Date for Filing a Procedural Schedule ("06/02/06 Order") in the instant case. In its 06/02/06 Order, the Commission established July 12 as the deadline for the submission of intervention requests, directed the Staff to file its recommendation or a preliminary response to the Joint Application no later than July 12, and established July 19 as the date for the filing of a proposed procedural schedule. Additionally, the Commission's 06/02/06 Order directed that notice of the Joint Application be given to the Missouri Department of Natural Resources, the County Commission of Franklin County, the members of the General Assembly representing the Joint Applicants' service areas, and the newspapers that serve the Joint Applicants' service areas.

4. No applications to intervene were submitted by the July 12 deadline, nor have any such applications been submitted since that date.

5. On July 12, the Staff filed its Preliminary Response to Joint Application ("Preliminary Response"), in which it noted the following: (a) that it had completed its initial review of the Joint Application and had not identified any particular areas of concern regarding the application; (b) that it anticipated the Joint Application would likely be resolved through the filing of a stipulation and agreement ("Stipulation"); and (c) that an evidentiary hearing would not be needed for this case.

6. Subsequent to the filing of the Joint Application and the Staff's Preliminary Response, the Parties discussed the matters involved in this case and agreed on the following: (a) that a Stipulation resolving this case was likely; (b) that the Parties' Stipulation, if executed, would include provisions stating the Parties' position that a evidentiary hearing is not necessary for this case; (c) that the Parties' Stipulation, if executed, would include provisions requesting that the City and the District be allowed to participate by telephone in any hearing ordered by the Commission; (d) that the Parties' Stipulation, if executed, and the Staff's filing of suggestions in

support of the Stipulation, as provided for in Paragraph 25 herein, would preclude the need for the Staff to file a recommendation regarding the Application; and (e) the date for filing the anticipated Stipulation.

7. On July 19, the Staff, on its own behalf and on behalf of the District and the City, filed a Proposed Procedural Schedule, which consisted of a proposed filing date of August 18 for the Parties' anticipated Stipulation. On July 20, the Commission issued an order establishing August 18 as the date by which the Parties' Stipulation, if executed, was to be filed.

**PROVISIONS REGARDING THE JOINT
APPLICATION & THE TERRITORIAL AGREEMENT**

8. In accordance with Commission Rule 4 CSR 240-3.625(1)(A), a copy of the Territorial Agreement was attached to the Joint Application.

9. In accordance with Commission Rule 4 CSR 240-3.625(1)(A), the Territorial Agreement designates the boundaries of the respective water and sewer service areas of the District and the City.

10. As neither of the Joint Applicants is otherwise subject to the jurisdiction of the Commission, it was not necessary for the Joint Applicants to submit an illustrative tariff reflecting changes in their operations or certification with the Joint Application, as is required by 4 CSR 240-3.625(1)(B) for Commission-regulated entities.

11. As noted in the Joint Application, implementation of the Territorial Agreement will not result in a change of the water or sewer service provider for any existing customers of either the District or the City. (Commission Rule 4 CSR 240-3.625(1)(D) requires that a listing of customers whose service provider will change be included with the application for approval of a water service territorial agreement.)

12. Concurrent with the filing of the Joint Application, the Joint Applicants submitted to the Commission the filing fee required by Commission Rule 4 CSR 240-3.625(1)(E), as is established by Commission Rule 4 CSR 240-3.630.

13. The Territorial Agreement specifies any and all powers granted to the City by the District to operate within the corporate boundaries of the District.

14. The Territorial Agreement specifies any and all powers granted to the District by the City to operate within the corporate boundaries of the City.

15. The Territorial Agreement will improve the ability of the Joint Applicants to plan for future water and sewer service, will enable the Joint Applicants to avoid wasteful and costly duplication of water and sewer utility services within the affected service areas, and will displace destructive competition between the Joint Applicants, all to the benefit of the Joint Applicants' respective customers.

16. The Joint Application contains provisions acknowledging that the Territorial Agreement in no way affects or diminishes the rights and duties of any water or sewer service supplier that is not a party to the agreement to provide service within the service areas set forth in the agreement.

17. The Territorial Agreement contains provisions acknowledging that the Commission must approve the agreement and that the Commission must approve any amendments to the agreement. Additionally, the Territorial Agreement contains provisions whereby the service areas established by the agreement may be modified on a case-by-case basis by an addendum to the agreement, with those provisions including a review of such addendums by the Commission.

18. The Parties agree that the Joint Application and the Territorial Agreement meet the requirements of the applicable Commission Rules and Section 247.172, RSMo, respectively.

19. The Parties agree that the Territorial Agreement is "not detrimental to the public interest" and that the Commission should so find.

20. The Parties agree that the Commission should issue an order approving the Joint Application, the Territorial Agreement and this Stipulation.

**PROVISIONS REGARDING THE NEED
FOR AN EVIDENTIARY HEARING**

21. Although Section 247.172.4, RSMo contains provisions stating that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement should be approved, the Parties state that it is their position that a hearing is not necessary in a case involving the approval of a territorial agreement where the case is resolved by the filing of a unanimous stipulation and agreement by the parties to the case, and where no other party has requested a hearing in the case.

22. The Parties' position set out in Paragraph 21 above is based upon the following Court and Commission cases: (a) the Western District Court of Appeals' finding in *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Mo.*, 776 S.W. 2d 494, 496 (Mo. App. W.D. 1989); (b) the Missouri Supreme Court's definition of "hearing" set out in *City of Richmond Heights v. Bd. of Equalization of St. Louis County*, 586 S.W. 2d 338, 342-343 (Mo. banc 1979); (c) the Western District Court of Appeals' finding in *State of Missouri, ex rel. Ozark Enterprises, Inc., v. Public Service Commission*, 924 S.W. 2d 597 (Mo. App., W.D. 1996); and (d) the Commission's **Report and Order** in Case No. WO-2005-0084.

GENERAL PROVISIONS

23. In the event the Commission schedules an evidentiary hearing in this case, the Parties agree that the testimony to be provided at the evidentiary hearing 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. Additionally, the District and the City respectfully request that they be allowed to participate by telephone in any hearing ordered by the Commission, with such participation to include the Joint Applicants having representatives available to answer questions from the Commission and/or the presiding officer regarding the matters that are the subject of this case.

24. 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 it shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The stipulations and agreements herein are specific to the resolution of this case, and are all made without prejudice to the rights of the signatories to take other positions in other cases.

25. The Staff will file either a pleading or a case file memorandum containing its suggestions in support of this Stipulation, and explaining its rationale for entering into the Stipulation. The Staff will serve the other signatories to this Stipulation with a copy of its suggestions and the other signatories shall be entitled to file responsive suggestions with the Commission. Responsive suggestions will be filed within five days of receipt of Staff's suggestions, and will also be served on the signatories to this Stipulation. The contents of any suggestions provided by the signatories to this Stipulation are their own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation, regardless of whether the Commission approves and adopts the Stipulation.

26. At any agenda meeting at which this Stipulation is noticed to be considered by the Commission, the Staff shall have the right to provide whatever oral explanation the Commission may request; provided, however, that the Staff shall, to the extent reasonably practicable, provide the other signatories to this Stipulation with advance notice of when the Staff shall respond to the

Commission's request for such explanation once it is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent that it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

WHEREFORE, the Parties respectfully request that the Commission issue an order that approves the Joint Application, the Territorial Agreement and this Stipulation, and that finds that an evidentiary hearing is not required in this case. In the event that the Commission schedules an evidentiary hearing, the Parties respectfully request that the Commission allow the District and the City to participate in the hearing by telephone.

Respectfully Submitted,

/s/ Keith R. Krueger

Keith R. Krueger
MO Bar No. 23857
Deputy General Counsel
P.O. Box 360
Jefferson City, MO 65102
573-751-4140 (telephone)
573-751-9285 (facsimile)
keith.krueger@psc.mo.gov (e-mail)

ATTORNEY FOR THE STAFF OF THE
MISSOURI PUBLIC SERVICE COMMISSION

/s/ Charles Brent Stewart by KRK

Charles Brent Stewart
MO Bar No. 34885
STEWART & KEEVIL, L.L.C.
4603 John Garry Drive, Suite 11
Columbia, MO 65203
573-499-0635 (telephone)
573-499-0638 (facsimile)
Stewart499@aol.com (e-mail)

ATTORNEY FOR JOINT APPLICANTS

/s/ Lewis R. Mills, Jr.

Lewis R. Mills, Jr.
Public Counsel
Missouri Bar No. 35275
P O Box 2230
Jefferson City, MO 65102
(573) 751-1304 (telephone)
(573) 751-5562 (facsimile)
lewis.mills@ded.mo.gov (e-mail)

ATTORNEY FOR THE OFFICE
OF THE PUBLIC COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that copies of this Stipulation have been mailed with first class postage, hand-delivered, transmitted by facsimile or transmitted via e-mail to all counsel and/or parties of record this 18th day of August 2006.

/s/ Keith R. Krueger