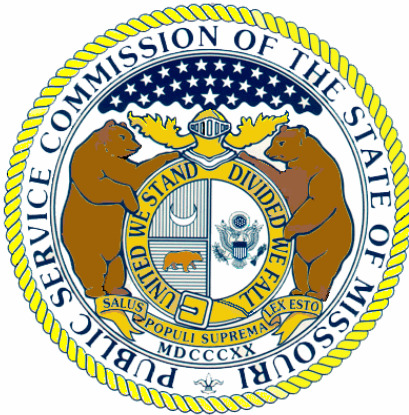


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of the City of )  
Union, Missouri and Public Water Supply District )  
No. 1 of Franklin County, Missouri for Approval of )  
a Territorial Agreement Concerning Territory in )  
Franklin County, Missouri. )

**Case No. WO-2003-0186**



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**REPORT AND ORDER**

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**Issue Date:** December 7, 2006

**Effective Date:** December 17, 2006

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

In the Matter of the Joint Application of the City of )  
Union, Missouri and Public Water Supply District )  
No. 1 of Franklin County, Missouri for Approval of ) **Case No. WO-2003-0186**  
a Territorial Agreement Concerning Territory in )  
Franklin County, Missouri. )

**APPEARANCES**

**Charles Brent Stewart**, Stewart & Keevil, L.L.C., 101 Cherry Street, Suite 302, Columbia, Missouri, 65201, for the City of Union, Missouri and Public Water Supply District No. 1 of Franklin County, Missouri.

**Christina Baker**, Legal Counsel, Office of the Public Counsel, Governor Office Building, Post Office Box 2230, Jefferson City, Missouri, 65102, for Office of the Public Counsel and the public.

**Kevin Thompson**, 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:** Kennard L. Jones, Judge.

**REPORT AND ORDER**

**Syllabus:** This Report and Order approves the application for approval of an addendum to a water service territorial agreement.

**Procedural History**

On March 6, 2003, the Missouri Public Service Commission issued a Report and Order approving a Territorial Agreement between the City of Union, Missouri and Public Water Supply District No. 1 of Franklin County, Missouri under Section 247.172,

RSMo 2000.<sup>1</sup> On September 20, 2006, the Joint Applicants requested that the Commission approve an Addendum to the Territorial Agreement.

Pursuant to the Territorial Agreement, parties to the Territorial Agreement must file objections to any Addendum within 45 days of the filing thereof. While Staff filed a response supporting the Addendum, no party filed an objection. Notwithstanding this provision in the Territorial Agreement, as required by Section 247.172 and consistent with the notice issued during the approval process of the original Territorial Agreement, the Commission issued notice of the Addendum requiring those interested to file applications to intervene by November 22, 2006. There were no requests to intervene.

### **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 Applicants:**

The City of Union, Missouri is a fourth class city, existing under Chapter 79. The City owns and operates a waterworks public utility and provides water service to the public under Section 91.450. Union is a political subdivision of the State of Missouri and is not subject to regulation by the Commission except for purposes of the joint application and as specified in Section 386.250(3). Union's principal place of business is located at 500 East Locust Street, Union, Missouri 63084.

Public Water Supply District No. 1 of Franklin County, Missouri is a public water supply district organized under Chapter 247. The District provides water service to customers located within the District's water service area in Franklin County, Missouri. The

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Revised Statutes of Missouri, 2000.

District is a political subdivision of the State of Missouri and is not subject to regulation by the Commission except for purposes of the application and as specified in Section 386.250(3). The District's principal place of business is located at 3017 Highway A, Washington, Missouri 63090.

**The Addendum:**

Through the Addendum, the City of Union seeks to provide service to four parcels located in the District's service territory as such territory is defined in the Territorial Agreement. The parties explain that in order for those parcels to receive water service from the District, the District would have to install new facilities at considerable costs. The City of Union, however, has facilities that are located near the parcels. Further, so that they may have water service, the owners of the parcels requested that the City of Union provide service. Attached to the Addendum are consent forms executed by those four property owners.

**Conclusions of Law**

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

**Jurisdiction**

The Commission has jurisdiction over the Territorial Agreements for the sale and distribution of water under Section 247.172. Likewise, the Commission has jurisdiction over addendums to such agreements.

## Public Interest

The Commission may approve an addendum if the agreement is not detrimental to the public interest.<sup>2</sup> In making a determination as to whether or not a territorial agreement, or an addendum thereto, is detrimental to the public interest, the Commission considers four factors.<sup>3</sup>

The first factor is the extent to which the agreement eliminates or avoids unnecessary duplication of facilities. As set forth in the application, The City of Union has facilities that are located near the areas to be serviced. For the District to provide service to those areas would require it to install new facilities at considerable costs.

Second, the Commission considers the ability of each party to the territorial agreement to provide adequate service to the customers in its exclusive service area. The abilities of both the City of Union and the District to provide service is discussed above. The City of Union is better able to provide service.

The third area of Commission inquiry is the likely effect of the addendum on customers of the Joint Applicants. The addendum will allow the owners of the four parcels to receive water service without the District having to expend considerable costs to provide such service.

Fourth, the Commission considers other cost and safety benefits attributed to the proposed territorial agreement. As discussed above, the Commission concludes that implementation of the Addendum to the Territorial Agreement will result in a cost benefit.

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<sup>2</sup> *In the Matter of the Application of Union Electric Company and Black River Electric Cooperative*, 4 MoPSC3d 66, 68-72 (Report & Order, iss'd September 15, 1995).

<sup>3</sup> *Id.*

Based on its findings of fact, the Commission concludes that the Addendum to the Territorial Agreement proposed by the City of Union, Missouri and Public Water Supply District No. 1 of Franklin County, Missouri is not detrimental to the public interest and should be approved.

### **The Necessity for an Evidentiary Hearing**

Section 247.172.3 states:

Before becoming effective, all territorial agreement entered into under the provision of this section, including any subsequent amendments to such agreements . . . shall receive the approval of the public service commission by report and order.

Section 247.172.4 states:

[T]he commission *shall hold evidentiary hearings* to determine whether such territorial agreements should be approved or disapproved. The commission may approve the application if it shall *after hearing* determine that approval of the territorial agreement in total is not detrimental to the public interest. [emphasis added]

In Case No. WO-2005-0084, issued on November 23, 2004, the Commission concluded that an evidentiary hearing was not required. In support of its conclusion, the Commission discussed the Western District Court of Appeals' holding in *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*<sup>4</sup>, which involved a water company's request for authority to alter the boundaries of its existing Certificate of Convenience and Necessity. After negotiations between the applicant and the Staff of the Commission, Staff recommended that the application be approved. Thereupon, the Commission issued a Report and Order approving the application. A party

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<sup>4</sup> 776 S.W. 2d 494 (Mo. App. W.D. 1989).

then appealed the Commission's decision on the basis that it erred by not holding a hearing as required by Section 393.170.3, which states:

The commission shall have the power to grant the permission and approval herein specified whenever it shall *after due hearing* determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. [emphasis added].

Upon review, the Western District held that the "requirement for a hearing contained in Section 393.170 was met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence."<sup>5</sup> The Court went on to note that there were no adverse parties and that under the circumstances it was proper for the Commission, after giving notice and an opportunity to be heard to all proper parties, to grant the requested relief upon the verified application.

The Commission notes, however, that *Deffenderfer* concerned Section 393.170, not Section 247.172, and had to do with the Commission's authority over certificates of convenience and necessity, not the Commission's authority to approve territorial agreements or amendments thereto. However, in 1996 the Western District addressed a similar issue in *State ex rel. Ozark Enterprises, Inc., v. Public Service Commission*.<sup>6</sup> *Ozark* involved a territorial agreement to which the Western District applied the reasoning in *Deffenderfer* by stating that "a hearing is sufficient if parties are offered the opportunity to intervene and request a hearing but no party requests to present evidence."<sup>7</sup> Although *Ozark* involved a territorial agreement pertaining to retail electric service under

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<sup>5</sup> *Id.* at page 496.

<sup>6</sup> 924 S.W. 2d 597 (Mo. App., W.D. 1996).

<sup>7</sup> *Id.* at page 601.

Section 394.312, and the matter before the Commission involves a territorial agreement pertaining to water service under Section 247.172, the language in each statute concerning the necessity of a hearing is identical. The Commission therefore concludes that the language in Section 247.172 is subject to the same interpretation offered in *Ozark*. Because the Western District has applied the reasoning of *Deffenderfer* to territorial agreements under Section 394.312, the Commission concludes that the reasoning in *Deffenderfer* is applicable to territorial agreements under Section 247.172.

After the Joint Applicants filed their application, the Commission provided notice and an opportunity for a hearing. There were no requests for intervention and no party has requested a hearing. The Joint Applicants, the Staff of the Commission, and the Office of the Public Counsel reached a Unanimous Stipulation and Agreement. As part of that agreement, the parties stipulated that any party objecting to an addendum must file an objection to the addendum within 45 days. No party has objected to the addendum. In light of these facts, and under the holdings in *Deffenderfer* and *Ozark*, the Commission concludes that an evidentiary hearing is not required.

Thus, although the Commission has not held an evidentiary hearing in this matter, the Commission will approve the Addendum to the Territorial Agreement.

**IT IS ORDERED THAT:**

1. The First Amendment and Addendum to Territorial Agreement attached to this order as Attachment A and signed by Public Water Supply District No. 1 of Franklin County, Missouri and the City of Union, Missouri, on December 1, 2004, shall be approved.



2. This Report and Order shall become effective on December 17, 2006.
3. This case may be closed on December 18, 2006.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Gaw, Clayton,  
and Appling, CC., concur.

Dated at Jefferson City, Missouri,  
on this 7th day of December, 2006.