

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 22nd day of December, 2005.

In the Matter of the Application of the Consolidated Public Water Supply District No. 1 of Clark County, Missouri, and the City of Canton, Missouri, for Approval of a Territorial Agreement Concerning Territory Encompassing Part of Lewis County, Missouri))) **Case No. WO-2006-0135**))

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Issue Date: December 22, 2005

Effective Date: January 1, 2006

Syllabus: This Report and Order approves the joint application for approval of a territorial agreement, and approves the Unanimous Stipulation and Agreement of the parties regarding that agreement.

Procedural History

On September 27, 2005, the City of Canton, Missouri, and Consolidated Public Water Supply District No. 1 of Clark County, Missouri, filed a verified application for approval of a territorial agreement. On September 28, the Commission issued an order directing that notice of the filing be given to the general public and to other potentially interested parties. That order also set an intervention deadline of October 18. There were no requests to intervene. On December 9, the City and the District, along with the Staff of the Commission and the Office of the Public Counsel, filed a Unanimous Stipulation and Agreement, asking that the Commission approve the territorial agreement and indicating

their belief that no evidentiary hearing is needed. The Commission's Staff filed suggestions in support of the stipulation and agreement on December 15.

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.

1. The City of Canton, Missouri, is a fourth-class city, existing under Chapter 79, RSMo 2000. The City owns and operates a water system within its boundaries in Lewis County. The City's principal office is located at P.O. Box 231, Canton, Missouri 63435.
2. Consolidated Public Water Supply District No. 1 of Clark County, Missouri, is a public water supply district organized under Chapter 247, RSMo 2000. The District provides water service to customers located within the District's water service area in Clark, Lewis, Knox, and Scotland counties in Missouri. The District's principal place of business is located at P.O. Box 307, Williamstown, Missouri 63473.
3. The territorial agreement submitted for the Commission's approval by the City and the District specifically designates the boundaries of the water service areas of the District and the City. The agreement also sets forth any and all powers granted to the District by the City to operate within the corporate boundaries of the City and any and all powers granted to the City to operate within the boundaries of the District.
4. The water service of existing customers will not be changed by the territorial agreement.
5. The Unanimous Stipulation and Agreement provides that the Commission does not need to hold an evidentiary hearing before approving the stipulation and agreement.

6. The Unanimous Stipulation and Agreement states that the territorial agreement will allow the City and the District to avoid wasteful duplication of water services within the affected service areas.

7. The Unanimous Stipulation and Agreement also indicates that the territorial agreement will improve the ability of the City and the District to plan for future water service, and will enable customers to know who will provide their water service.

8. The territorial agreement contains provisions regarding the process for amendments to be made to the agreement, and provisions acknowledging that the terms of the agreement in general must receive the approval of the Commission, but does not include provisions requiring that amendments to the agreement be approved by the Commission. However, the Unanimous Stipulation and Agreement provides that the Commission's order approving the joint application should be conditioned upon the parties' submission of an addendum to the territorial agreement acknowledging that amendments to the territorial agreement must be approved by the Commission.

9. The parties to the Unanimous Stipulation and Agreement agree that the joint application and the territorial agreement meet the requirements of the applicable statute as well as applicable Commission rules, and that the territorial agreement is not detrimental to the public interest.

Conclusions of Law

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

1. Section 247.172, RSMo 2000, gives the Commission jurisdiction over territorial agreements concerning the sale and distribution of water.

2. Section 247.172.3, RSMo 2000, provides that before becoming effective, all territorial agreements entered into under the provisions of that section, including any subsequent amendments to such agreements, shall receive the approval of the Public Service Commission.

3. Section 247.172.4, RSMo 2000, provides that the Commission may approve such a territorial agreement if the agreement is not detrimental to the public interest.

4. Although Section 247.172.4, RSMo 2000, provides that the Commission is to hold a hearing to determine whether a territorial agreement is to be approved, State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri,¹ holds that the requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence.

Decision

Having considered the Joint Application and Unanimous Stipulation and Agreement, the Commission concludes that the designation of water service areas is in the public interest. Furthermore, the Commission determines that the territorial agreement between the City of Canton and Consolidated Public Water Supply District No. 1 of Clark County, Missouri, is in the public interest and should be approved. As agreed by the parties, the Commission will condition its approval on the submission by the parties of an addendum to the agreement acknowledging that amendments to the territorial agreement must be approved by the Commission.

¹ 776 S.W. 2d 494 (Mo. App. W.D. 1989).

IT IS THEREFORE ORDERED:

1. That the joint application for approval of a territorial agreement, filed by the City of Canton, Missouri, and Consolidated Public Water Supply District No. 1 of Clark County, Missouri, is approved.
2. That the Unanimous Stipulation and Agreement entered into by City of Canton, Missouri, Consolidated Public Water Supply District No. 1 of Clark County, Missouri, the Staff of the Commission, and the Office of the Public Counsel is approved.
3. That the territorial agreement entered into by the City of Canton, Missouri, and Consolidated Public Water Supply District No. 1 of Clark County, Missouri, is approved, conditioned on the submission by the parties of an addendum to the agreement acknowledging that amendments to the territorial agreement must be approved by the Commission.
4. That this order shall become effective on January 1, 2006.
5. That this case may be closed on January 2, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC.,
concur and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 22nd day of December, 2005.