

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

In the Matter of the City of Chillicothe,)	
Missouri, and Public Water Supply)	<u>Case No. WO-2013-0193</u>
District No. 2 of Livingston, Missouri)	

STAFF’S RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and submits to the Missouri Public Service Commission (Commission) the following in support of the *Staff Recommendation*:

1. October 16, 2012, the City of Chillicothe, Missouri and Public Water Supply District No. 2 of Livingston County, Missouri (collectively hereafter referred to as Applicants) filed an *Application for Approval of Joint Service Agreement (Application)* with the Commission.

2. On October 18, 2012, the Commission issued an *Order Directing Notice*, allowing any party to intervene by November 7, 2012. No party sought to intervene in this matter.

3. On November 20, 2012, Staff requested until December 21, 2012, to file its recommendation or other appropriate filing. This filing meets that timeline.

4. During its review, Staff raised some concern with the *Application*, namely that a legal description was not filed.

5. The Commission has the authority to approve territorial agreements under Section 247.172 RSMo¹. Section 247.172.2 RSMo states that any application “shall specifically designate the boundaries” subject to the territorial agreement.

¹ All statutory references are to the Missouri Revised Status, as currently supplement.

Commission Rule 4 CSR 3.625 (1)(A) requires a copy of the agreement, “including a legal description” to be filed in an application to approve a territorial agreement. Section 247.172.7 grants the Commission authority to “entertain and hear complaints” involving any Commission- approved territorial agreement. Staff asserts that the current filing is not sufficient because a map is not a sufficient legal description and having a legal description on file with the Commission will better protect the individual interests of the Applicants, any future customer in the two territories and any future party who has a complaint as a result of this proposed territorial agreement.

6. Rather than file a legal description, the Applicants filed a photo-map and then requested good cause waiver of Commission Rule 4 CSR 3.625 (1)(A). Staff recommends that the Commission deny the request for waiver and the *Application* until such time that a legal description is filed.

WHEREFORE, Staff respectfully submits this *Recommendation* for the Commission’s information and consideration and respectfully recommends the Commission deny the application until such time a legal description may be filed and any other relief the Commission deems just.

Respectfully submitted,

/s/ Rachel M. Lewis

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or by electronic mail to all counsel of record on this 21st day of December, 2012.

/s/ Rachel M. Lewis

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. WO-2013-0193 – Territorial Agreement: City of Chillicothe, MO and
Public Water Supply District No. 2 of Livingston County

FROM: Jim Merciel – Water & Sewer Unit

<u>/s/ Jim Busch</u>	<u>12/21/12</u>
Manager – Water and Sewer Unit	Date
<u>/s/ Rachel Lewis</u>	<u>12/21/12</u>
General Counsel's Office	Date

SUBJECT: Staff Recommendation for the Commission not to approve the Territorial Agreement at this time and not to grant the waiver because the file does not contain an adequate legal description

DATE: December 21, 2012

OVERVIEW AND PROCEDURAL BACKGROUND

On October 16, 2012, the City of Chillicothe, Missouri (City) filed its *Application for Approval of Joint Service Agreement (Application)*, in which it seeks approval of a “Joint Service Agreement Between The City of Chillicothe, Missouri and Public Water Supply District #2 (District) of Livingston County, Missouri” (Agreement). The City and the District are collectively referred to as “Applicants” hereafter.

The City owns and operates a water system and provides water service generally to customers in and around the City’s boundary. The District is a public water district and a political subdivision, created through the circuit court of Livingston County as provided by state statutes, and provides water service to areas within Livingston County, including areas immediately surrounding the City. Neither the City as a municipal water provider, nor the District as a public water supply district, is subject to the jurisdiction of the Public Service Commission (Commission) with respect to water service provided to their customers.

The Agreement entered into between the City and the District provides for an agreed-upon boundary line that encircles the City and would serve to separate the effective service areas of the City and the District, so as to avoid competition between the two water providers and duplication of water service. This agreement is supported by a map that was included with the Application.

On October 18, 2012, the Commission issued its *Order Directing Notice* which among other things, set November 7, 2012, as the date by which interested parties could intervene in this case.

No parties sought to intervene. On November 13, 2012, the Commission issued its *Order Directing Staff to File a Status Report* requiring Staff to submit a status report stating when it would file a recommendation in this case. On November 20, 2012, Staff filed its *Staff's Status Report and Request for Extension of Time to File Recommendation*, in which Staff stated it could file a recommendation by December 21, 2012. This Memorandum constitutes Staff's position on this matter at this time.

On December 14, 2012, the Applicants filed a *Joint Request for Waiver (Request)* asking the Commission to waive Commission Rule 4 CSR 240.3.625 (1)(A) which requires a proposed territorial agreement to have a specific designation of the boundary, including legal description. The Applicants seek a waiver from that Commission Rule citing that "to obtain specific legal descriptions of each party's territory would be very time consuming and expensive to both parties" as their good cause for the Commission Rule to be waived, pursuant to Commission Rule 4 CSR 240.2.015. That *Request* is currently pending before the Commission.

STAFF'S REVIEW OF THE APPLICATION

Staff has reviewed a copy of the Agreement, including the map that was included with the *Application*. Staff also briefly discussed some issues about the proposed boundary with the City. The map is a Global Information System (GIS) photo generated by the City's mapping technology system, and purports to depict the intended territorial boundary line. The map included with the Agreement shows a green line, which represents the territorial boundary line. The City's territorial area is referred to in the Agreement as the "Green Zone." The Agreement provides that the City will serve its existing customers and new customers within the Green Zone; and the District will serve new customers outside the Green Zone. However, the District, at its discretion, may continue to serve any of its existing customers that are within the Green Zone. There is no proposal for any customer to be required to switch water providers or for the City and District to transfer any assets used to provide water service. There are portions of the City's limits that are outside the Green Zone, but Staff understands that the District currently serves customers within those areas and will continue to provide service to those customers. Additionally, Staff was informed by the City that significant further development within those areas is not likely to occur because of flood risk.

As noted, the City did not include a written legal description of the Green Zone depicted on the map in the *Application*, as is required by the Commission's rule 4 CSR 240-3.625 (1) (A), but has submitted a request for waiver of that rule because it will be costly and very time consuming for both parties. The Applicants explain that they have agreed to allow the map to represent the territorial agreement.

LEGAL MATTERS

The Applicants are required to obtain the Commission's approval of this proposed territorial agreement under Section 247.172 of the Revised Missouri Statutes (RSMo).¹ Staff has reviewed the photo-map in detail and is able to observe the current fence lines, characteristics of properties, and roads, however, it is not specific in terms of metes and bounds, latitude and longitude lines, or United States Geological Survey (USGS) section lines and section divisions. It is simply a photograph of the proposed territory. Although Staff agrees that creating a legal description of the proposed territorial agreement may entail additional effort and possibly additional costs, Staff and the Commission have not been presented with any estimation of such costs or length of time, the harm such delay would cause, or any other tangible basis for approval of a waiver of a requirement beyond a general statement that obtaining a legal description will be time consuming and costly. The Applicants have not met the requirements of the Commission's Rule in filing this *Application* because the photo of the map is insufficient as a legal description, and they have not established good cause to waive such a requirement.

As noted, Section 247.172 RSMo grants the Commission the authority to approve all territorial agreements entered into under the provisions of that section between and among public water supply districts, water corporations subject to public service commission jurisdiction, and municipally owned utilities. Section 247.172.2 RSMo also states that the territorial agreements "shall specifically designate the boundaries of the water service area of each water supplier subject to the agreement." Additionally, Commission Rule 4 CSR 240-3.625 (1)(A) requires that a request for approval of a territorial agreement must include "a copy of the territorial agreement, including legal description." Typically, a legal description includes a description of the property in metes and bounds and referencing the USGS survey grid, not simply a map that is printed from a party's mapping technology system. In this case, the Applicants filed a *Joint Request for Waiver* citing Commission Rule 4 CSR 240-2.015, stating that obtaining "a specific legal description of each party's territory would be very time consuming and expensive to both parties."² Staff does not find the support or explanation sufficient enough to establish a "good cause" waiver of the Commission Rule 4 CSR 3.625(1)(A) requirement of a legal description.

Further, Section 247.172.7 grants the Commission jurisdiction to entertain and hear complaints involving any Commission-approved territorial agreement. So, if a dispute regarding the proposed territorial agreement occurs in the future, near or far, the Commission will have jurisdiction to oversee such dispute. At this point, the record would be void of much support for the agreed-upon proposed territorial agreement beyond the map. The description of the territories involved is depicted solely from a photograph of the area. It is possible that this photo could never be duplicated for many reasons, including that it may not be possible to take a picture from that exact place or with that exact equipment. It is also possible that changes will occur over time and may affect the surrounding properties, fence lines and visibility of apparent

¹ All references to the Revised Missouri Statutes (RSMo) are to 2000, as currently supplemented.

² See paragraph 5 of the *Joint Request for Waiver* filed on December 14, 2012.

survey lines that currently exist. Such a change may affect the territorial agreement in the future. Any conflict with the territorial agreement is to be entertained by the Commission, pursuant to state statute. Having a legal description on file with the Commission will better protect the individual interests of the Applicants, any future customer in the two territories and any future party who has a complaint as a result of this proposed territorial agreement. A legal description will also assist the Commission in determining the appropriate resolution to any dispute related to this proposed territorial agreement. Relying solely, or mostly, on a photograph concerns Staff. While Staff appreciates the parties' ability to reach an agreement, Staff cannot recommend that the Commission approve this *Application* until a more specific legal description is filed. If the parties present a more substantial reason for just cause to waive the requirement of a legal description, Staff is able to review such a request at that time, but cannot support the waiver at this time.

OTHER MATTERS

Since neither the City nor the District are subject to the Commission's jurisdiction, Commission Rule 4 CSR 240-3.625 (1) (B) requiring tariff modifications does not apply. Also because they are not subject to PSC jurisdiction, neither the City nor the District are required to submit annual reports or pay annual assessments to the Commission and thus there are no deficiencies with respect to these issues. The City has submitted a check to the Commission for this matter, as required by 4 CSR 240-3.630 (1).

STAFF'S CONCLUSION AND RECOMMENDATIONS

Staff determines that the Agreement entered into between the City and the District may be in the public interest, however it cannot recommend the Commission approve the *Application* until such time that a legal description can be filed with the *Application* or better justification can be given to support a waiver of the Commission's rule. Staff specifically recommends that the Commission deny the Applicants' *Request for Waiver*.

