

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 11th day of
March, 2008.

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) **Case No. WO-2006-0135**
Approval of a Territorial Agreement Concerning)
Territory Encompassing Part of Lewis County, Missouri)

**ORDER REGARDING PROPOSED ADDENDUM TO
TERRITORIAL AGREEMENT**

Issue Date: March 11, 2008

Effective Date: March 21, 2008

On December 22, 2005, the Commission issued a Report and Order that approved a territorial agreement between the City of Canton, Missouri, and Consolidated Public Water Supply District No. 1 of Clark County, Missouri. That territorial agreement 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.

The Commission's decision to approve the territorial agreement was based on a Unanimous Stipulation and Agreement signed by the City and the District, along with the Staff of the Commission and the Office of the Public Counsel. One provision of that stipulation and agreement conditioned the Commission's approval of the territorial agreement on the City and the District submitting an addendum to the agreement

“acknowledging that amendments to the territorial agreement must be approved by the Commission”. Consequently, the Commission included such a condition in its Report and Order approving the territorial agreement.

The City and the District did not, however, promptly submit the required addendum. Instead, two years later, on January 28, 2008, the City and the District jointly submitted what they described as an Addendum to Joint Application. In that document, signed by only by legal counsel for the City and the District, the joint applicants agree that they will make no further Territorial Agreements or transfers of service area and services without prior written approval from the Commission.

Staff filed a recommendation regarding the submitted addendum on February 19. No party has responded to that recommendation.

In its recommendation, Staff correctly points out that the submission does not satisfy the condition imposed in the 2005 Report and Order. The language of the addendum does not explicitly require that any amendment to the Territorial Agreement be approved by the Commission. Furthermore, the submitted addendum is signed only by counsel and has not been “executed by the parties and approved by the parties’ respective governing bodies” as required by the provisions of the Territorial Agreement. For those reasons, Staff advises the Commission to find that the submitted addendum does not satisfy the condition imposed upon the City and the District in the 2005 Report and Order.

Staff’s readings of the Report and Order, the Territorial Agreement and the submitted addendum are correct. The submitted addendum does not satisfy the condition imposed in the Report and Order. The Commission expects its orders to be obeyed and under other circumstances would not hesitate to order a party to comply with a condition

imposed in such an order. However, after considering the matter, the Commission finds that it is not appropriate to enforce the condition imposed in the Report and Order.

The statute that gives the Commission the authority to approve water territorial agreements already explicitly requires that any amendments to such agreements must be approved by the Commission before they can become effective.¹ Therefore, the condition imposed in the Report and Order would require the City and the District to submit an addendum that would merely repeat what is already explicitly required by the statute. Furthermore, the parties to this territorial agreement are not public utilities that are normally subject to the Commission's jurisdiction. Rather they find themselves in an unfamiliar position before the Commission solely for the purpose of seeking approval of this territorial agreement. For that reason, the Commission does not want to impose any unnecessary burden on these applicants. Under these particular circumstances, requiring the City and the District to comply with this condition by preparing and filing an addendum that repeats a requirement already imposed by statute would be merely a bureaucratic exercise that would waste the time and resources of all concerned.

IT IS ORDERED THAT:

1. The City of Canton, Missouri, and Consolidated Public Water Supply District No. 1 of Clark County, Missouri, are relieved of the obligation to file an addendum to their territorial agreement acknowledging that amendments to the territorial agreement must be approved by the Commission.

2. The condition requiring the filing of an addendum imposed on the Commission's previous approval of the Territorial Agreement between the City of Canton,

¹ Section 247.172.4, RSMo (Supp. 2007)

Missouri, and Consolidated Public Water Supply District No. 1 of Clark County, Missouri, is withdrawn and that Territorial Agreement is approved without condition.

3. Any amendment to the approved Territorial Agreement must be approved by the Commission before becoming effective, as required by Section 247.172.4, RSMo (Supp. 2007).

4. This order shall become effective on March 21, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Appling and Jarrett, CC., concur.
Clayton, C., dissent.

Dated at Jefferson City, Missouri,
on this 11th day of March, 2008.