

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

In the Matter of the Joint Application of the)
Public Water Supply District No. 2 of St.)
Charles County, Missouri, and the City of)
Wentzville, Missouri, for Approval of an)
Amendment to Their Water Service Area)
Territorial Agreement)
Case No. WO-2006-0230

STIPULATION AND AGREEMENT

COME NOW the Missouri Public Service Commission Staff ("Staff"), Public Water Supply District No. 2 of St. Charles County, Missouri ("District"), and the City of Wentzville, Missouri ("City") (collectively, "the Parties"), and for their Stipulation and Agreement ("Stipulation") state the following to the Missouri Public Service Commission ("Commission").

PROCEDURAL HISTORY

1. On November 29, 2005, the Public Water Supply District No. 2 of St. Charles County, Missouri, and the City of Wentzville, Missouri (collectively, the "Joint Applicants") filed a Joint Application asking the Commission to approve an Amendment to their Commission-approved water service area territorial agreement, pursuant to the provisions of Section 247.172, RSMo 2000 (unless noted otherwise, all statutory references herein are to RSMo 2000) and applicable Commission rules.

2. On December 1, 2005, the Commission issued its **Order Directing Notice and Establishing Date for Intervention** ("12/01/05 Order"), wherein it established December 21, 2005 as the deadline for the submission of intervention requests in this case. No requests to intervene in this case were submitted by the established deadline, nor have any such requests been submitted since.

3. On December 3, 2005, the Commission issued its **Order Directing Staff of the Commission to File a Status Report**, wherein it directed the Staff to advise the Commission of the status of this case through the filing of a status report on or before January 13, 2006.

4. On January 13, 2006, the Staff filed its first Status Report wherein it stated that it had completed its initial review of the Joint Application in this case, and that it believed this case can be resolved through the filing of a Stipulation and Agreement, and without the necessity of a hearing. Further, the Staff stated that it believed a stipulation could be completed and filed no later than February 10, 2006, and that if that status changed the Staff would so advise the Commission.

5. On February 10, 2006, the Staff filed its second Status Report wherein it stated that it had not yet been able to provide a draft stipulation to counsel for the Joint Applicants, but that it believed that, based on a telephone conversation with counsel for the Joint Applicants, a stipulation could be filed no later than February 17, 2006.

**PROVISIONS REGARDING THE JOINT APPLICATION AND
THE AMENDMENT TO THE TERRITORIAL AGREEMENT**

6. A copy of the Amendment to the previously-approved territorial agreement was attached to the Joint Application.

7. The Amendment to the previously-approved territorial agreement designates the boundaries of the respective water service areas of the District and the City.

8. Maps depicting the amended service areas of the Joint Applicants were attached to the Joint Application.

9. A boundary description of the service area that is the subject of the Amendment to the previously-approved territorial agreement was attached to the Joint Application.

10. As neither of the Joint Applicants is otherwise subject to the jurisdiction of the Commission, the provisions of 4 CSR 240-2.060(1)(K) & (L) and 4 CSR 240-3.625(1)(B) are not applicable for purposes of the subject Joint Application.

11. As noted in the Joint Application, implementation of the Amendment to the previously-approved territorial agreement will not result in a change of water supplier for any existing customers of either the District or the City.

12. As with the previously-approved territorial agreement, the Amendment will enable the Joint Applicants to avoid wasteful and costly duplication of water utility services within the affected service area, and will displace destructive competition between the Joint Applicants, all to the benefit of the Joint Applicants' respective customers.

13. As with the previously-approved territorial agreement, the Amendment will improve the ability of the Joint Applicants to plan for future water service and will enable customers to know who will provide their water service.

14. The Amendment to the previously-approved territorial agreement does not affect the provisions of the joint application pertaining to the territorial agreement that acknowledged that the territorial agreement in no way affects or diminishes the rights and duties of any water supplier that is not a party to the agreement to provide service within the service areas set forth in the agreement.

15. The Parties agree that the Joint Application and the Amendment to the previously-approved territorial agreement meet the requirements of Section 247.172, RSMo and the applicable Commission rules, respectively.

16. The Parties agree that the subject Amendment to the previously-approved territorial agreement is "not detrimental to the public interest" and that the Commission should so find.

17. The Parties agree that the Commission should issue an order approving the Joint Application, the subject Amendment to the previously-approved territorial agreement and this Stipulation.

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

18. Although Section 247.172.4, RSMo contains provisions stating that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement, and presumably amendments to territorial agreements, 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 or amendments thereto 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.

19. The Parties' position set out in Paragraph 18 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

20. 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 subject

Amendment to the previously-approved 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, if they choose to do so, 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.

21. 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.

22. 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 its 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.

23. 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.

24. Although the Office of the Public Counsel ("OPC") is not a signatory to this Stipulation, Public Counsel Lewis R. Mills, Jr. has stated to Staff member Dale Johansen that the OPC has no objection to the approval of the Joint Application, the subject Amendment to the previously-approved territorial agreement or this Stipulation.

WHEREFORE, the Parties respectfully request that the Commission issue an order that approves the Joint Application, the subject Amendment to the previously-approved territorial agreement, and this Stipulation, without holding an evidentiary hearing. 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 if they so choose.

Respectfully Submitted,

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