

In the Matter of the Application of the )  
Consolidated Public Water Supply District )  
No. 1 of Clark County, Missouri and the )  
City of LaGrange, Missouri for Approval )  
of a Territorial Agreement Concerning )  
Territory Encompassing Part of Lewis )  
County, Missouri )

**CASE NO. WO-2007-0188**

**RECOMMENDATION REGARDING APPLICATION**  
**AND WATER SERVICE TERRITORIAL AGREEMENT**

**COME NOW** the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and for its Recommendation Regarding Application and Water Service Territorial Agreement (Recommendation) states the following to the Missouri Public Service Commission (Commission).

## PROCEDURAL HISTORY

1. On May 4, 2006, Consolidated Public Water Supply District No. 1 of Clark County (the District) and the City of LaGrange (the City) (collectively, the Joint Applicants) executed a Territorial Agreement concerning their respective water service territories in and around the City of LaGrange, pursuant to the provisions of Section 247.172, RSMo.
2. On November 14, 2006, the District and the City filed a Joint Application seeking the Commission's approval of the above-referenced Territorial Agreement, as is required by Section 247.172, RSMo. The Joint Application was filed pursuant to the provisions of Commission Rules 4 CSR 240-3.625 and 4 CSR 240-3.630.
3. On November 16, 2006, the Commission issued its **Order Directing Notice and Setting Date for Submission of Intervention Requests** in this case. In that order, the Commission established November 27, 2006 as the deadline for the submission of intervention

requests, and directed that notice of the Joint Application be given to the Missouri Department of Natural Resources, the County Commission of Lewis County, the members of the General Assembly representing Lewis County, and the media serving Lewis County.

4. No applications to intervene were submitted by the established deadline of November 27, 2006, nor have any such applications been submitted since that date.

5. On November 28, 2006, the Commission issued its **Order Directing Staff to File a Recommendation**, in which it directed the Staff to file its recommendation for this case no later than December 29, 2006. The order did, however, note that the Staff could request additional time to file its recommendation, if needed.

6. On December 29, 2006, the Staff filed its Request for Extension of Time, in which it requested that it be allowed until January 19, 2007 to file its recommendation, or a unanimous stipulation and agreement resolving the case. On that same date, the presiding regulatory law judge for this case issued an order by delegation granting the Staff's requested extension of time.

#### **STAFF'S CONCLUSIONS REGARDING THE JOINT APPLICATION & THE TERRITORIAL AGREEMENT**

7. A copy of the subject Territorial Agreement was attached to the Joint Application, as is required by Commission Rule 4 CSR 240-3.625(1)(A).

8. As is noted in the Joint Application, the Territorial Agreement designates the boundaries of the respective water and sewer service areas of the District and the City, as is required by Commission Rule 4 CSR 240-3.625(1)(A).

9. As neither of the Joint Applicants is otherwise subject to the jurisdiction of the Commission, it was not necessary for the Joint Applicants to submit an illustrative tariff

reflecting changes in their operations or certification with the Joint Application, as is required by 4 CSR 240-3.625(1)(B) for Commission-regulated entities.

10. As is noted in the Joint Application, the Territorial Agreement will enable the Joint Applicants to avoid wasteful duplication of water services within the affected service areas. As a result, the Joint Applicants take the position that the Territorial Agreement is not detrimental to the public interest, a position with which the Staff agrees. (Commission Rule 4 CSR 240-3.625(1)(C) requires an explanation as to why a territorial agreement is in the public interest.)

11. As noted in the Joint Application, implementation of the Territorial Agreement will not result in a change of the water or sewer service provider for any existing customers of either the District or the City. The Joint Application further noted that the District and the City are unaware of any people whose water service provider could potentially be changed in the future by implementation of the Territorial Agreement. A listing of the water service customers of the City that are located within the water service area of the District was included with the Joint Application. (Commission Rule 4 CSR 240-3.625(1)(D) requires that a listing of customers whose service provider will change be included with the application for approval of a water service territorial agreement.)

12. Concurrent with the filing of the Joint Application, the Joint Applicants submitted to the Commission the filing fee required by Commission Rule 4 CSR 240-3.625(1)(E), as is established by Commission Rule 4 CSR 240-3.630.

13. As is noted in the Joint Application, the Territorial Agreement specifies any and all powers granted to the City by the District to operate within the corporate boundaries of the District.

14. As is noted in the Joint Application, the Territorial Agreement specifies any and all powers granted to the District by the City to operate within the corporate boundaries of the City.

15. The Joint Application contains provisions acknowledging that the Territorial Agreement in no way affects or diminishes the rights and duties of any water or sewer service supplier that is not a party to the agreement to provide service within the service areas set forth in the agreement.

16. Based on the above, the Staff has reached the following conclusions:

(a) That the Joint Application and the Territorial Agreement meet the requirements of the applicable Commission Rules and Section 247.172, RSMo, respectively;

(b) That the Territorial Agreement is "not detrimental to the public interest" and that the Commission should so find; and

(c) That the Commission should issue an order approving the Joint Application and the Territorial Agreement.

**STAFF'S POSITION REGARDING THE  
NEED FOR AN EVIDENTIARY HEARING**

17. Although Section 247.172.4, RSMo contains provisions stating that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement should be approved, the Staff submits that a hearing is not necessary in a case involving the approval of a territorial agreement where the other parties to the case (in this instance, the Joint Applicants and the Office of the Public Counsel) either state their support for the Staff's recommendation, state that they do not object to the Staff's recommendation or do not respond to the Staff's recommendation, within ten days after it is filed. If any of these "criteria" are met, it

is the Staff's view that the situation would be the same as if a Unanimous Stipulation and Agreement had been filed by all of the parties to the case.

18. The Staff's position set out in Paragraph 17 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.

19. Historically, when the Commission has held evidentiary hearings in water service territorial agreement cases, the hearing consists of the Staff calling one witness to testify in support of the subject application and territorial agreement, unless otherwise requested by the Commission in advance of the hearing. If the Commission schedules an evidentiary hearing for this case, the Staff sees no reason why this procedure should not be followed.

#### **STAFF'S RECOMMENDATION**

20. Based upon the above, the Staff recommends that the Commission issue an order that: (a) approves the Joint Application and the subject Territorial Agreement; and (b) finds that an evidentiary hearing is not required in this case.

#### **VERIFICATION**

21. Attached hereto is an affidavit from Staff member Dale W. Johansen, Manager of the Commission's Water & Sewer Department, in which he verifies that he conducted a review

of the Joint Application and the Territorial Agreement that are the subjects of this case and that he participated in the preparation of this Recommendation.

**WHEREFORE**, the Staff respectfully submits this Recommendation for the Commission's consideration in this case.

Respectfully Submitted,

/s/ **Keith R. Krueger**

Keith R. Krueger  
Deputy General Counsel  
Missouri Bar No. 23857

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Missouri Public Service Commission

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#### **CERTIFICATE OF SERVICE**

I hereby certify that copies of this Recommendation have been mailed with first class postage, hand-delivered, transmitted by facsimile or transmitted via e-mail to all counsel and/or parties of record this 22nd day of January 2007.

/s/ **Keith R. Krueger**

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

**AFFIDAVIT OF DALE W. JOHANSEN**

STATE OF MISSOURI     )

) SS

**CASE NO. WO-2007-0188**

COUNTY OF COLE     )

COMES NOW Dale W. Johansen, being of lawful age, and on his oath states the following: (1) that he is the Manager of the Missouri Public Service Commission's Water & Sewer Department; (2) that he conducted a review of the Joint Application and the Territorial Agreement that are the subjects of the instant case; (3) that he participated in the preparation of the foregoing Recommendation; (4) that he has knowledge of the matters set forth in the foregoing Recommendation; and (5) that the matters set forth in the foregoing Recommendation are true and correct to the best of his knowledge, information and belief.



Dale W. Johansen – Manager  
Water & Sewer Department  
Utility Operations Division

Subscribed and sworn to before me this 22<sup>nd</sup> day of January 2007.

  
Notary Public



SUSAN L. SUNDERMEYER  
My Commission Expires  
September 21, 2010  
Callaway County  
Commission #06942086

My Commission Expires: 9-21-10