

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,) **Case No. WO-2006-0230**
Missouri, for Approval of an Amendment to Their)
Water Service Area Territorial Agreement)

REPORT AND ORDER APPROVING AMENDMENT TO
TERRITORIAL AGREEMENT

Issue Date: March 2, 2006

Effective Date: March 12, 2006

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

Procedural History

On November 29, 2005, the Public Water Supply District No. 2 of St. Charles County, Missouri, (the District) and the City of Wentzville, Missouri, (the City) filed a verified Application for approval of an amendment to a territorial agreement. On December 1, 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 December 21. There were no requests to intervene. On February 17, 2006, the City and the District, along with the Staff of the Commission, filed a nonunanimous Stipulation and Agreement, asking that the Commission approve the amended 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 February 24, 2006. The Office of the Public Counsel did not join the agreement or timely file an objection to the Stipulation and Agreement. Commission Rule 4 CSR 240-2.115(2)(C) provides that the Commission may treat a nonunanimous stipulation and agreement as a unanimous stipulation and agreement if no party timely objects.

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 Wentzville, Missouri, is a fourth-class city, existing under Chapter 79, RSMo 2000. The City owns and operates a water system within its boundaries in St. Charles County. The City's principal office is located at 310 West Pearce Boulevard, Wentzville, Missouri.

2. Public Water Supply District No. 2 of St. Charles 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 St. Charles and Warren counties in Missouri. The District's principal place of business is located at 100 Water Drive, O'Fallon, Missouri.

3. On October 17, 2000, the Commission issued a Report and Order in Case No. WO-2006-849 approving a water service territorial agreement (the "previous territorial agreement") entered into by the City and the District.

4. The parties have entered into an amended territorial agreement, attached to their Joint Application as Attachment A, for the purpose of resolving water service boundary issues brought about due to a third party water supplier, the City of Foristell, desiring to sell

its municipal water supply system to the District. The previous territorial agreement between the City and the District places a portion of Foristell's existing system solely within the designated service boundaries of the City of Wentzville. The parties seek to reassign that portion of the City of Foristell's water service area boundaries between the City and the District so that the District may consummate its sale transaction with the City of Foristell.

5. The amended 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.

6. The water service of existing customers of the City and the District will not be changed by the amended territorial agreement.

7. The Stipulation and Agreement provides that the Commission does not need to hold an evidentiary hearing before approving the Stipulation and Agreement.

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

9. The Stipulation and Agreement also indicates that the amended 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.

10. The amended territorial agreement contains a provision providing that the original territorial agreement between the parties shall remain in full force and effect, except

as otherwise provided for in the amended territorial agreement. Further amendment to the territorial agreement must be approved by the Commission.

11. The parties to the Stipulation and Agreement agree that the Joint Application and the amended territorial agreement meet the requirements of the applicable statute as well as applicable Commission rules, and that the amended 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, and amendments thereto, 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.

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

Decision

Having considered the Joint Application and Stipulation and Agreement, the Commission concludes that the designation of water service areas is in the public interest. Furthermore, the Commission determines that the amendment to the territorial agreement between the City of Wentzville and the Public Water Supply District No. 2 of St. Charles County, Missouri, is in the public interest and should be approved. The Commission notes that under Section 247.172 and the terms of the original territorial agreement, further amendments to the territorial agreement must be approved by the Commission.

IT IS ORDERED THAT:

1. The Joint Application for approval of an amendment to the water service territorial agreement, filed by the City of Wentzville, Missouri, and the Public Water Supply District No. 2 of St. Charles County, Missouri, is approved.
2. The Stipulation and Agreement entered into by the City of Wentzville, Missouri, the Public Water Supply District No. 2 of St. Charles County, Missouri, and the Staff of the Commission is approved.
3. The amended territorial agreement entered into by the City of Wentzville, Missouri, and the Public Water Supply District No. 2 of St. Charles County, Missouri, is approved. Further amendments to the territorial agreement must be approved by the Commission.
4. This order shall become effective on March 12, 2006.

5. This case may be closed on March 13, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale
Secretary

(S E A L)

Steven C. Reed, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 2nd day of March, 2006.