

**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)
Intergovernmental Territorial Agreement)

File No. WO-2021-0253

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), through Staff Counsel’s Office, and for its *Staff Recommendation*, states as follows:

Procedural History

1. On October 17, 2000, the Commission issued its *Report and Order* in Case No. WO-2000-849 approving the *Intergovernmental Territorial Agreement* (“Territorial Agreement”) entered into by The Public Water Supply District No. 2 of St. Charles County, Missouri and the City of Wentzville (collectively the “Joint Applicants”). Consistent with Section 247.172 RSMo, the Territorial Agreement specified the respective water service area boundaries as between the Joint Applicants did not affect the water service territories of any suppliers not party to the Territorial Agreement.

2. Paragraph 12 of the Territorial Agreement approved by the Commission provides: “[n]either the boundaries described by this Agreement nor any term of this Agreement may be modified, repealed or changed except by a writing mutually approved by the respective parties and the Missouri Public Service Commission.”

3. Pursuant to Paragraph 6 of the Territorial Agreement, on February 9, 2021, the Joint Applicants requested that the Commission approve an Amendment to said Territorial Agreement.

4. Attached to the *Joint Application for Approval of an Amendment to Intergovernmental Territorial Agreement*, is a copy of the *Second Amendment to Intergovernmental Territorial Agreement* (“Second Amendment”) as executed by the City of Wentzville and the District on December 9, 2020. Pursuant to the Second Amendment, the District agrees to transfer parcels of land from the District’s service territory to the City for the right to provide water service to another parcel of land currently within the District’s water service area.

5. On February 10, 2021, the Commission issued its *Order Directing Notice and Setting Deadlines for Intervention and Staff Recommendation*, ordering the Commission’s Data Center and Public Policy and Outreach Department, consistent with Section 247.172 RSMo, to issue notice of the Amendment, directing those interested to file applications to intervene in the matter by February 25, 2021, and ordering its Staff to file a recommendation in this matter no later than March 26, 2021.

Joint Applicants

6. The Public Water Supply District No. 2 of St. Charles County, Missouri is a public water supply district organized and existing under Chapter 247 RSMo. The District currently provides water service at retail and wholesale to customers located within the District’s water service area in and around St. Charles County and Warren County, Missouri. The District is a political subdivision of the State of Missouri and is not subject to regulation by the Commission except for purposes of the joint application. The District’s principal place of business is located at 100 Water Drive, O’Fallon, Missouri, 63366.

7. City of Wentzville is a fourth class city organized and operating under Chapter 79 RSMo. Wentzville operates a municipally-owned water utility in St. Charles County, Missouri. Wentzville is a political subdivision of the state of Missouri and is not subject to regulation by the commission except for purposes of the application. Wentzville's principal place of business is located at 1001 Schroeder Creek, Wentzville, Missouri, 63385.

Jurisdiction

8. The Commission has jurisdiction over Territorial Agreements for the sale and distribution of water under Section 247.172, RSMo.

9. Section 247.172, RSMo, provides that “[c]ompetition to sell and distribute water, as between and among public water supply districts, water corporations subject to public service commission jurisdiction, and municipally owned utilities may be displaced by written territorial agreements, but only to the extent hereinafter provided for in this section.”

10. Section 247.172.4, RSMo, states that “[b]efore becoming effective, all territorial agreements entered into under the provisions of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligations of any party to an agreement, shall receive the approval of the public service commission by report and order.”

11. Pursuant to Section 247.172.5, RSMo, the Commission may approve a territorial agreement if the Commission determines that the territorial agreement in total is not detrimental to the public interest.

12. In determining whether an amendment to a territorial agreement is not detrimental to the public interest, the Commission has considered four factors: 1) the extent to which the agreement eliminates or avoids unnecessary duplication of facilities; 2) the ability of each party to the territorial agreement to provide adequate service to the customers in its service territory; 3) the likely effect of the addendum on customers of the parties to the agreement; and 4) other cost and safety benefits attributed to the proposed territorial agreement.¹

13. The filing requirements for applications for approval of water service territorial agreements are outlined in Commission Rule 20 CSR 4240-3.625².

Staff's Findings

14. Based on its review of the Second Amendment, Staff has determined that such amendment meets the requirements contained in Paragraph 12 of the Territorial Agreement, and the Joint Application meets the filing requirements of Commission Rule 20 CSR 4240-3.625. Further, Staff has determined the Second Amendment is not detrimental to the public interest for the following reasons:

- a. ***Elimination/Avoidance of Duplication of Service:*** Approval of the Second Amendment will enable the Joint Applicants to avoid duplication of water utility services within the affected area.
- b. ***Ability to Provide Adequate Service:*** Both the City of Wentzville and the District have the requisite capabilities to provide adequate service to customers within their respective service territories.

¹ *In Re City of Union*, Case No. WO-2003-0186, 2006 WL 3613271, at 2 (Dec. 7, 2006)(citing *In the Matter of the Application of Union Electric Company and Black River Electric Cooperative*, 4 Mo PSC 3d 66, 68-72 (Report & Order, iss'd September 15, 1985)).

² *Some requirements, such as illustrative tariffs reflecting changes to tariffs of a regulated utility, do not apply here.*

c. **Effect on Customers:** Currently, the territory at issue has no current City of Wentzville customers; these customers are either on private wells or are already customers of the District.

d. **Other Cost and Safety Benefits:** Based upon the above, Staff concludes that approval of the Second Amendment will result in a cost benefit.

Staff's Recommendation

15. Based upon its review of the Second Amendment, Staff recommends that the Commission issue an order approving the Second Amendment to the previously-approved territorial agreement that is the subject of this proceeding.

WHEREFORE the Staff respectfully requests that the Commission accept its Recommendation in this matter; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Casi Aslin

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**Attorney for the Staff of the
Missouri Public Service Commission**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all parties and/or counsel of record on this 26th day of March 2021.

/s/ Casi Aslin

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AFFIDAVIT OF DARONN A. WILLIAMS

STATE OF MISSOURI)	
)	ss.
COUNTY OF COLE)	

COMES NOW Daronn A. Williams, and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation*; and that the same is true and correct according to his best knowledge and belief, under penalty of perjury.

Further the Affiant sayeth not.

/s/ Daronn A. Williams
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