

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

In the Matter of the Application of the City of)
Union, Missouri and Public Water Supply)
District No. 1 of Franklin County, Missouri for) **File No. WO-2021-0254**
Approval of a Third Amendment to Territorial)
Agreement Concerning Territory in Franklin)
County, Missouri)

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 November 19, 2002, in File No. WO-2003-0186, the City of Union (“City” or “Union”), Missouri, and Public Water Supply District No. 1 of Franklin County, Missouri, (“District”) (collectively “Joint Applicants”) filed their *Joint Application for Approval of a Water Service Area Territorial Agreement* (“Initial Application”) pursuant to Section 247.172, RSMo. Joint Applicants, the Office of the Public Counsel (“Public Counsel”), and Staff, on January 17, 2003, filed a Unanimous Stipulation and Agreement, recommending approval of the Join Applicants’ Initial Application. On March 6, 2003, after an evidentiary hearing, the Commission issued a Report and Order approving the Initial Application.

2. Paragraph 6 of the Territorial Agreement approved by the Commission provides:

The parties may agree on a case-by-case basis by an Addendum hereto to allow a structure to receive service from one party though the structure is located in the service area of the other.

Such Addendum referred to above shall be filed with the Executive Secretary of the Missouri Public Service Commission in the same manner

as a motion or other pleading, with a copy submitted to the Office of the Public Counsel.

Each Addendum shall consist of a notarized statement identifying the structure, the party to serve the structure and the justification for the Addendum and indicating that the parties support the Addendum.

Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served which acknowledges such customer's receipt of notice of the contemplated service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the Public Service Commission and shall indicate the customer's consent to be serviced by the Party contemplated by the Addendum.

If the Staff of the Public Service Commission or Office of Public Counsel do not submit a pleading objecting to the Addendum within forty-five (45) days of the filing thereof, the Addendum shall be deemed approved by the aforesaid parties. However, if a pleading in opposition to the Addendum is filed by the above listed parties, the Commission shall schedule an evidentiary hearing at the earliest reasonable opportunity to determine whether the Addendum should be approved. Each Addendum shall contain a statement in bold uppercase typeface indicating that the Staff or Office of Public Counsel has forty-five (45) days to oppose the Addendum or else the Addendum shall be deemed approved by the aforesaid parties.

Each party, pursuant to an executed Addendum, shall have the right to provide temporary service until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an Addendum until the effective date of an Order of the Commission or a court regarding the removal of same.

3. Pursuant to Paragraph 6 of the Territorial Agreement, the First Amendment to the Territorial Agreement was addressed in File No. WO-2003-0186, and the Second Amendment to the Territorial Agreement in File. No.WO-2020-0249.

4. On February 9, 2021, the Joint Applicants filed a *Second Addendum to Water Service Territorial Agreement* ("Second Addendum")

6. Attached to the Second Addendum, is a copy of the *Third Amendment and Addendum to Territorial Agreement* ("Third Amendment") as executed by the City and the District on December 14, 2021. Pursuant to the Third Amendment, the District agrees to

transfer a parcel 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 as described in the Territorial Agreement approved by the Commission in the Joint Applicant's Initial Application.

5. On February 3, 2021, the Commission issued its *Order Directing Notice, Setting Intervention Deadline, and Directing 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 Third Amendment, directing those interested to file applications to intervene in the matter by March 19, 2021, and ordering its Staff to file a recommendation in this matter no later than March 26, 2021.

Joint Applicants

6. The City of Union, Missouri, is a fourth class city, existing under Chapter 79 of the Revised Statutes of Missouri. The City owns and operates a waterworks public utility and provides water service to the public under Section 91.450, RSMo. Union 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. Union's principal place of business is located at 500 East Locust Street, Union, Missouri, 63084.

7. Public Water Supply District No. 1 of Franklin County, Missouri, is a public water supply district organized under Chapter 247 of the Revised Statutes of Missouri. The District provides water service to customers located within the District's water service area in Franklin 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

application. The District's principal place of business is located at 3017 Highway A, Washington, Missouri, 63090.

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 addendum 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 Third Amendment, Staff has determined that such amendment meets the requirements contained in Paragraph 6 of the Territorial Agreement, and the Joint Application meets the filing requirements of Commission Rule 20 CSR 4240-3.0625. Further, Staff has determined the Third Amendment is not detrimental to the public interest for the following reasons:

a. ***Elimination/Avoidance of Duplication of Service:*** Approval of the Third Amendment will enable the Joint Applicants to avoid duplication of water utility services within the affected area. As set forth in the Joint Applicants' filing, the parcel of land at issue is currently undeveloped. However, the City of Union has facilities that are located near the areas to be serviced. For the District to provide service to those areas would require it to install new facilities at considerable cost.

b. ***Ability to Provide Adequate Service:*** Both the City of Union and the District have the requisite capabilities to provide adequate service to customers within their respective service territories. However, due to the

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 her.*

potential costs associated with the District serving the area at issue, the City of Union is better suited to provide service.

c. ***Effect on Customers:*** Currently, the territory at issue is undeveloped, and there are no customers who are currently receiving service from the District whose service will transfer to the City. However, the Third Amendment will allow all property owners within the area at issue to receive water service without incurring, and/or the District incurring, considerable costs for the provision of such service, once the property is developed. Further, all of the affected property owners have requested and/or consented to service provided by the City.

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

Staff's Recommendation

15. Based upon its review of the Third Amendment, Staff recommends that the Commission issue an order approving the Third 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

Casi Aslin,

Mo. Bar No. 67934

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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 ANDREW HARRIS

STATE OF MISSOURI)	
)	ss.
COUNTY OF COLE)	

COME NOW Andrew Harris, 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/ Andrew Harris
Andrew Harris