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**Missouri Public
Service Commission**

Exhibit No.:

Issue: Territorial Assessment

Witness: James A. Busch

Sponsoring Party: MO PSC Staff

Type of Exhibit: Direct Testimony

Case No.: WC-2014-0018

Date Testimony Prepared: April 25, 2014

MISSOURI PUBLIC SERVICE COMMISSION

REGULATORY REVIEW DIVISION

DIRECT TESTIMONY

OF

JAMES A. BUSCH

**STAFF of THE MISSOURI PUBLIC SERVICE COMMISSION vs
CONSOLIDATED PUBLIC WATER SUPPLY DISTRICT C-1 of
JEFFERSON COUNTY and CITY OF PEVELY**

CASE NO. WC-2014-0018

*Jefferson City, Missouri
April 2014*

Staff Exhibit No. 1
Date 6-11-14 Reporter JS
File No. WC-2014-0018

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

The Staff of the Missouri Public Service
Commission,)

Complainant)

v.)

Consolidated Public Water Supply District)
C-1 of Jefferson County Missouri)

Case No. WC-2014-0018

and)

City of Pevely, Missouri,)

Respondents)

AFFIDAVIT OF JAMES A. BUSCH

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

James A. Busch, of lawful age, on his oath states: that he has participated in the preparation of the following Direct Testimony in question and answer form, consisting of 5 pages of Direct Testimony to be presented in the above case, that the answers in the following Direct Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.



James A. Busch

Subscribed and sworn to before me this 25th day of April, 2014.

SUSAN L. SUNDERMEYER
Notary Public - Notary Seal
State of Missouri
Commissioned for Callaway County
My Commission Expires: October 03, 2014
Commission Number: 10942086



Notary Public

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DIRECT TESTIMONY

OF

JAMES A. BUSCH

**STAFF of THE MISSOURI PUBLIC SERVICE COMMISSION vs CONSOLIDATED
PUBLIC WATER SUPPLY DISTRICT C-1 of JEFFERSON COUNTY and
CITY OF PEVELY**

CASE NO. WC-2014-0018

Q. Please state your name and business address.

A. My name is James A. Busch and my business address is P. O. Box 360,
Jefferson City, Missouri 65102.

Q. By whom are you employed and in what capacity?

A. I am the Regulatory Manager of the Water and Sewer Unit, Regulatory Review
Division of the Missouri Public Service Commission (Commission).

Q. Please describe your educational and professional background.

A. I hold Bachelor of Science and Master of Science degrees in Economics from
Southern Illinois University at Edwardsville. From April 2005 through January 2008, I
worked as a Regulatory Economist III with the Energy Department of the Commission.
Previously, I worked as a Public Utility Economist with the Office of the Public Counsel
(Public Counsel) from 1999 to 2005. Prior to my employment with Public Counsel, I worked
as a Regulatory Economist I with the Procurement Analysis Department of the Commission
from 1997 to 1999. I have been employed as the Regulatory Manager of the Water and Sewer
Department with the Staff of the Commission (Staff) since February 2008. In addition, I am a
member of the Adjunct Faculty of Columbia College. I teach both graduate and
undergraduate classes in economics.

1 Q. Have you previously filed testimony before the Commission?

2 A. Yes. The cases in which I have filed testimony before the Commission are
3 listed on Schedule JAB-1 attached to this testimony.

4 Q. What is the purpose of your direct testimony?

5 A. The purpose of my direct testimony is to present Staff's position in Case No.
6 WC-2014-0018. Specifically, I will address how Staff became aware of the issue and will
7 provide the factual background of the case.

8 **I. Executive Summary**

9 Q. Please summarize your direct testimony.

10 A. On or about June 14, 2013, Staff received a phone call from Mr. John
11 Holborow, who is the Court appointed receiver (Receiver or Mr. Holborow) for H & H
12 Development Group. As the receiver, Mr. Holborow is responsible for the management of
13 Valle Creek Condominiums (Development) in Barnhart, MO. Mr. Holborow indicated that
14 the Development was being threatened with disconnection from the Consolidated Public
15 Water Supply District C-1 (CPWSD or District). Upon further discussion and inquiry by
16 Staff, it was determined that the CPWSD and the City of Pevely (City or Pevely) had entered
17 into a territorial agreement. Neither entity had requested permission from the Commission for
18 approval of the territorial agreement (Agreement). The purpose of this complaint is to request
19 the Commission require the District/City to submit the territorial agreement to the
20 Commission as required by state statute, Section 247.172, RSMo 2000.

21 **II. Background**

22 Q. When did Staff become aware of a territorial agreement between the District
23 and the City?

1 A. As previously stated, on or about June 14, 2013, Staff received a phone call
2 from Mr. John Holborow acting as receiver for H & H Development Group. Mr. Holborow
3 explained the situation that was occurring between the Development and the District. Staff
4 asked Mr. Holborow to send it information regarding the situation. Mr. Holborow sent Staff
5 an email on June 14, 2013. This email contained an attachment that described a brief history
6 of the Development. This history included information concerning a territorial agreement that
7 was entered into between the City and the District.

8 Q. Have you examined the territorial agreement in question?

9 A. Yes. It was supplied to Staff by Mr. Holborow and is attached to this
10 testimony as Schedule JAB-2.

11 Q. Why do you characterize it as a territorial agreement?

12 A. It is titled, "Territorial Agreement Between the Consolidated Public Water
13 Supply District No. C-1 of Jefferson County, Missouri, and the City of Pevely, Missouri." It
14 states that its purpose is "to stipulate and agree with respect to the geographic areas which
15 each will serve, in order to facilitate development of areas within the City of Pevely and the
16 Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri." It
17 provides that the parties will respect each other's territorial boundaries and specifies certain
18 exceptions where Pevely is authorized to provide water service within the District. It is
19 similar to many other territorial agreements submitted to the Commission for approval by
20 districts, municipalities, and public utilities. Attached as Schedule JAB-3 is a listing of
21 various territorial agreements that have been filed with the Commission. The list only dates
22 back to 1995.

23 Q. After receiving the email from Mr. Holborow, what did Staff do next?

1 A. After reviewing the information, Staff forwarded the information to Staff
2 Counsel's Office for a legal review. Staff also searched the EFIS system to determine if any
3 territorial agreement between the City and the District had been submitted to the Commission
4 for approval by the Commission. Staff found no such submission. Staff continued to stay in
5 contact with Mr. Holborow and asked for additional information. Finally, Staff, with its
6 Counsel, contacted the District and the City to gather more information.

7 Q. Did Staff find any record of a territorial agreement on file?

8 A. No. Neither the City nor the District ever filed its territorial agreement with
9 the Commission requesting approval.

10 Q. Were the City and District informed of the requirement to submit their
11 territorial agreement for Commission approval?

12 A. Yes. The City and District were informed of that requirement during phone
13 conversations held between June 14 and July 19, 2013.

14 Q. To what requirement are you referring?

15 A. The requirement to which I am referring is found in Section 247.172, RSMo
16 2000. This section of statute states that "competition to sell and distribute water, as between
17 and among public water supply districts, water corporations subject to public service
18 commission jurisdiction, and municipally owned utilities may be displaced by written
19 territorial agreements," but only as approved by the Commission.

20 Q. What did Staff do next?

21 A. Staff filed this complaint on July 19, 2013 since discussions with the City and
22 District did not result in the filing of an application seeking Commission approval of the
23 territorial agreement.

1 **III. Recommendation**

2 Q. What is Staff's recommendation?

3 A. Staff recommends that the Commission order the District and City to submit
4 their territorial agreement to the Commission as required by Section 247.172, RSMo 2000.

5 Q. Does this conclude your direct testimony?

6 A. Yes.

**Cases of Filed Testimony
James A. Busch**

<u>Company</u>	<u>Case No.</u>
Union Electric Company	GR-97-393
Missouri Gas Energy	GR-98-140
Laclede Gas Company	GO-98-484
Laclede Gas Company	GR-98-374
St. Joseph Light & Power	GR-99-246
Laclede Gas Company	GT-99-303
Laclede Gas Company	GR-99-315
Fiber Four Corporation	TA-2000-23; et al.
Missouri-American Water Company	WR-2000-281/SR-2000-282
Union Electric Company d/b/a AmerenUE	GR-2000-512
St. Louis County Water	WR-2000-844
Empire District Electric Company	ER-2001-299
Missouri Gas Energy	GR-2001-292
Laclede Gas Company	GT-2001-329
Laclede Gas Company	GO-2000-394
Laclede Gas Company	GR-2001-629
UtiliCorp United, Inc.	ER-2001-672
Union Electric Company d/b/a AmerenUE	EC-2001-1
Laclede Gas Company	GR-2002-356
Empire District Electric Company	ER-2002-424
Southern Union Company	GM-2003-0238
Aquila, Inc.	EF-2003-0465
Missouri-American Water Company	WR-2003-0500
Union Electric Company d/b/a AmerenUE	GR-2003-0517
Aquila, Inc.	ER-2004-0034
Aquila, Inc.	GR-2004-0072
Missouri Gas Energy	GR-2004-0209
Empire District Electric Company	ER-2004-0570
Aquila, Inc.	EO-2002-0384
Aquila, Inc.	ER-2005-0436
Empire District Electric Company	ER-2006-0315
Kansas City Power & Light	ER-2006-0314
Union Electric Company d/b/a AmerenUE	ER-2007-0002
Aquila, Inc.	EO-2007-0395
Missouri-American Water Company (Live)	WC-2009-0277
Missouri-American Water Company	WR-2010-0131
Review of Economic, Legal and Policy Considerations Of District Specific Pricing and Single Tariff Pricing (Live)	SW-2011-0103
Timber Creek Sewer Company	SR-2011-0320
Missouri-American Water Company	WR-2011-0337
Emerald Pointe Utility Company	SR-2013-0016



TERRITORIAL AGREEMENT
BETWEEN
THE CONSOLIDATED PUBLIC WATER
SUPPLY DISTRICT NO. C-1 OF
JEFFERSON COUNTY, MISSOURI,
AND THE CITY OF PEVELY, MISSOURI

WHEREAS, this Agreement is made and entered into this 12th day of November, 2007, by and between the Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri, P.O. Box 430, Barnhart, Missouri 63012, hereinafter referred to as "District" and the City of Pevely, Missouri, City Hall, 301 Main Street, Pevely, Missouri 63070, hereinafter referred to as "Pevely".

WHEREAS, District is a public water supply district organized pursuant to the provisions of Chapter 247 of the Revised Statutes of Missouri, distributing potable water within its corporate boundaries in Jefferson County, Missouri; and

WHEREAS, Pevely is a municipal corporation of the Fourth Class which also furnishes potable water as part of its municipal services within areas defined by its corporate boundaries; and

WHEREAS, City is presently providing potable water to areas within the District generally located within all or parts of subdivisions known as "Hunters Glen", "Tiara at the Abbey", and "Vinyards at Bushberg"; and

WHEREAS, the parties desire to stipulate and agree with respect to the geographic areas which each will serve, in order to facilitate development of areas within the City of Pevely and the Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri.

NOW, THEREFORE, the parties agree as follows:

1. The parties hereto acknowledge the geographical corporate boundaries of each entity and agree that such boundaries shall be in full force and effect as they presently exist and as may be subsequently modified by annexation and/or detachment in conformance with applicable provisions of Missouri Law pertaining to cities of the Fourth Class and Public Water Supply Districts.

2. Pevely shall continue to provide water service to those portions of the Hunters Glen subdivision, Tiara at the Abbey subdivision, and Vinyards at Bushberg subdivision as shown by plats by the subdivisions which are recorded with the Recorder of Deeds Office in Jefferson County, Missouri.

3. Pevely also agrees to cease all plans to extend water service within the current geographic boundaries of the District. Any future development which is within corporate boundaries of both the City of Pevely and the District, including the development presently known as Valle Creek Condominiums, shall be served by the District unless the

rights to serve such development are assigned in writing to the City by the District.

4. Should the City of Pevely be requested by any person or entity to provide water service within the corporate boundaries of the Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri, Pevely shall forthwith inform C-1 of such request in writing, and shall further direct any developing person or entity to the offices C-1 for purposes of determining whether C-1 has the desire or ability to extend water service to the area proposed for development. Thereafter, C-1 shall have sixty (60) days to make a determination whether to extend water service to the area proposed for development. If C-1 chooses not to extend water service to the area of proposed development, C-1, within said sixty (60) day period, shall notify the City of Pevely in writing of its decision. The parties agree that neither shall attempt to subvert the other's Regulations, Rules of Fee Structure for the sole purpose of causing a person or entity seeking water service to choose one entity over the other or to obtain unfair advantage over the signatory to this Agreement, it being the intention of the parties hereto that they shall not be in competition with each other for purposes of providing water service, but rather, that the parties shall cooperate for purposes of facilitating development within areas located within both entities.

5. It is the intention of the parties that this Agreement shall be a permanent determination as to which party shall provide water service to the areas specifically described in this Agreement, and neither party shall in the future attempt to alter the terms of this Territorial Agreement.

6. The parties further agree that all other territory within the District boundaries shall remain the exclusive territory of the District, and Pevely covenants and agrees that during the terms of this Agreement as specified hereafter it shall not, without the written consent of the District (a) seek detachment of any additional territory now within the boundaries of the District; (b) provide water service to any additional territory now within the boundaries of the District that is hereafter detached from the District; (c) seek to develop an agreement to provide water service to any additional territory now within the boundaries of the District that may be hereafter annexed by the City; and (d) directly or indirectly seek to dissolve the District or hold itself out as an alternative water supplier in any dissolution proceeding.

7. The terms of this Agreement shall be for a period of ten (10) years unless same is terminated earlier by virtue of the District having the ability to serve the areas referred to herein.

8. Pevely shall enact a Resolution and/or Ordinance approving the execution of this Agreement by the duly elected officials, and the District shall adopt a Resolution or Ordinance by its Board of Directors approving this Territorial Agreement and execution by its duly elected officials.

9. The terms of this Agreement shall be in full force and effect from the time the last of the signatories hereto approve same by an Ordinance duly enacted by its governing body.

10. Upon the execution and approval of the terms of this Agreement by each of the signatories hereto, the parties shall execute Stipulations of Dismissal With Prejudice, at each party's cost, of certain litigation currently pending within the Circuit Court of Jefferson County, Missouri, styled The Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri, vs. City of Pevely, Missouri, Case No: CV306-1286-CC-J2, and the execution of this Agreement shall constitute and full and complete release of any and all claims, whether statutory, contractual, or tort either party may have against the other predicated upon the provision of water services within those geographic areas located within the corporate boundaries of both the City of Pevely and the Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri, whether such claims may be presently apparent or may be discovered in the future.

11. Any written notices referred to in this Agreement shall be mailed to the parties at the following addresses:

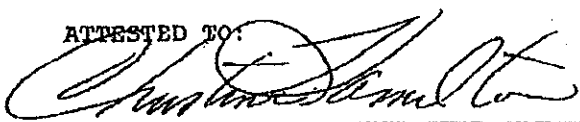
Consolidated Public Water
Supply Dist. No. C-1
Attn: District Engineer
6645 Moss Hollow Road
P.O. Box 430
Barnhart, MO 63012

City of Pevely
Attn: Mayor and
Director of Public Works
City Hall
301 Main Street
Pevely, MO 63070

IN WITNESS WHEREOF, the City of Pevely has caused this Territorial Agreement to be executed by its Mayor and attested by its Clerk pursuant to Resolution adopted by the Board of Alderman of the City; and the District has caused the same to be executed by the Board of Directors of said District and attested by the Clerk of said District pursuant to a Resolution or Ordinance adopted by the District's Board of Directors.

CONSOLIDATED PUBLIC WATER SUPPLY DISTRICT
NO. C-1 OF JEFFERSON COUNTY, MISSOURI

By: 
Richard Hammond - President

ATTESTED TO:

Christine Hamilton - Clerk

CITY OF PEVELY, MISSOURI

BY:

John Knobloch
John Knobloch - Mayor

ATTESTED TO:

Betty S. Hickley, CMC
City Clerk

List of Territorial Agreements

WO-2013-0443, In the Matter of the Application of Missouri-American Water Company, for the Approval of an Agreement with the Chariton County Public Water Supply District #2 to Sell and Deliver Water for Resale and Related Tariff Sheets.

WO-2013-0193, In the Matter of the City of Chillicothe, Missouri, and Public Water Supply District No. 2 of Livingston County, Missouri's Application for Approval of Joint Service Agreement.

WO-2012-0088, In the Matter of the Application of Missouri-American Water Company and the Public Water Supply District No. 2 of St. Charles County, Missouri, for Approval of a Territorial Agreement Concerning Territory in St. Charles County, Missouri.

WO-2009-0351, In the Matter of the Joint Application of the City of Centralia, Missouri and Public Water Supply District No. 10 of Boone County, Missouri for Approval of a Third Amendment to a Written Territorial Agreement Concerning Territory Within Boone County, Missouri.

WO-2007-0188, 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.

WO-2007-0091, In the Matter of the Joint Application of the City of Centralia, Missouri and Public Water Supply District No. 10 of Boone County, Missouri for Approval of a Second Amendment to a Written Territorial Agreement Concerning Territory within Boone County, Missouri.

WO-2006-0488, In the Matter of the Joint Application of Public Water Supply District No. 3 of Franklin County, Missouri and the City of St. Clair, Missouri for Approval of a Water Service Area Territorial Agreement in Franklin County, Missouri.

WO-2006-0230, 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.

WO-2006-0135, In the Matter of the Application of Consolidated Public Water Supply District No. 1 of Clark County, Missouri and the City of Canton, Missouri for Approval of a Territorial Agreement Concerning Territory Encompassing Part of Lewis County, Missouri.

WO-2005-0286, In the Matter of the Application of Missouri-American Water Company, for the approval of an Agreement with the City of Kirkwood, Missouri to Construct Transmission Mains and Points of Delivery and to Sell and Deliver Water for Resale and Related Tariff Sheets.

WO-2005-0242, In the matter of the application of Consolidated Public Water Supply District NO. 1 of Boone County, Missouri for approval of a territorial agreement concerning territory encompassing part of Boone County, Missouri.

WO-2005-0127, In the matter of the joint application of the City of Hannibal, Missouri and Public Water Supply District No. 1 of Ralls County, Missouri for approval of a water service area territorial agreement.

WO-2005-0084, In the Matter of the Joint Application of the City of Centralia, Missouri and Public Water Supply District No. 10 of Boone County, Missouri for approval of a first amendment to a written territorial agreement concerning territory within Boone County, Missouri and Audrain County, Missouri.

WO-2004-0163, In the Matter of the Joint Application of the City of Hannibal, Missouri and Public Water Supply District No. 1 of Ralls County, Missouri for Approval of Three Territorial Agreements Concerning Water Service Areas in Marion County, Missouri.

WO-2003-0186, In the matter of the joint application of the City of Union, Missouri and Public Water Supply District No.1 of Franklin County, Missouri for approval of a Territorial Agreement concerning territory in Franklin County, Missouri.

WO-2002-208, Centralia, City of (Water territorial agreement with Public Water Supply District No. 10 of Boone County which designates boundaries in Boone County, approved).

WO-2002-226, Pacific, City of (Water territorial agreement with Public Water Supply District No. 3 of Franklin County which encompasses part of Franklin County, approved).

WO-2001-326, Public Water Supply District No. 3 of Franklin County (Water territorial agreement with the City of Washington, encompassing part of Franklin County, approved).

WO-2000-472, City of Columbia (Territorial agreement with Public Water Supply District No. 4 of Boone County which encompasses part of Boone County, approved).

WO-2000-849, Public Water Supply District No. 2 of St. Charles County (Water territorial agreement with City of Wentzville, granted).

WO-99-129, Columbia, City of and Consolidated Public Water Supply District No. 1 of Boone County (Water territorial agreement, Boone County, approved).

WO-99-561, Public Water Supply District #1 of Nodaway County & City of Maryville (Territorial agreement, approved).

WO-95-282, City of Ste. Genevieve, Public Water Supply District No. 1 of Ste. Genevieve, (Water territorial agreement, approved).