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January 25, 2008

Carrie M. Lewis, Superintendent  
Milwaukee Water Works  
841 North Broadway, Room 409  
Milwaukee, Wisconsin 53202

Re: Intergovernmental Agreements and Provision of Water Supply

Dear Ms. Lewis:

By letter dated January 24, 2008, you forwarded to us a letter from the Public Service Commission of Wisconsin ("PSC") regarding intergovernmental agreements and the provision of suburban water service. You asked that we review the PSC letter in light of our June 18, 2007 opinion on this issue.

In that opinion we advised that the Water Works could request PSC approval of a voluntary agreement by a suburban community to contribute funds to the City's general fund in recognition of the secondary effects of suburban sprawl in return for the City's agreement to extend service to the community. We advised that this arrangement should be included in the Water Service Agreement as part of the PSC's regulatory review, though we cautioned that we did not know whether the PSC would approve such an arrangement.

The PSC has now indicated that an intergovernmental agreement may be an acceptable way to agree on provisions ancillary to the initial provision or expansion of suburban water service so long as the negotiated terms do not impinge on the PSC's regulatory authority. The PSC desires to review any intergovernmental agreement involving water service to ensure that the terms of the agreement do not conflict with the PSC's regulatory obligations.

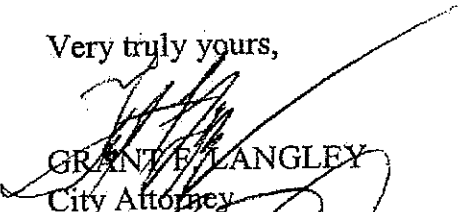
OFFICE OF THE CITY ATTORNEY

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January 25, 2008  
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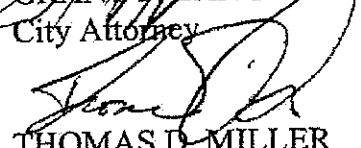
Based on the PSC's letter we conclude that the City of Milwaukee could negotiate an intergovernmental agreement such as you described in your April 30, 2007 letter. As the PSC pointed out, the City cannot make continued service to its existing suburban customers contingent upon execution of an intergovernmental agreement.

If you have any comments or concerns or require any additional information, please do not hesitate to contact the undersigned.

Very truly yours,



GRANT E. LANGLEY  
City Attorney



THOMAS D. MILLER  
Assistant City Attorney

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TDM:tdm

1048-2008-217:128134



# Public Service Commission of Wisconsin

Daniel R. Ebert, Chairperson  
Mark Meyer, Commissioner  
Lauren Azar, Commissioner

610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

January 16, 2008

Ms. Carrie Lewis  
Milwaukee Water Works  
841 North Broadway, Room 402  
Milwaukee, WI 53202-3613

**RECEIVED**

**JAN 18 2008**

**SUPT'S OFFICE  
Milwaukee Water Works**

RE: Intergovernmental Agreements

Dear Ms. Lewis:

This is in response to your inquiry regarding the role of intergovernmental agreements pursuant to Wis. Stat. § 66.0301 and the provision of suburban water service by the Milwaukee Water Works.

First and foremost, please be aware that any intergovernmental agreement should not in any way implicate or attempt to reduce the rate making authority of the Public Service Commission of Wisconsin (Commission). Nevertheless, intergovernmental agreements provide a valid method to accommodate the initial provision or expansion of suburban public water utility service.

Given Milwaukee's long history in the water utility business, it already has the legal obligation to serve in regard to its existing suburban service. Any intergovernmental agreements for those areas cannot be made contingent on the provision of water. Intergovernmental agreements, however, can serve a role to the extent that Milwaukee is considering expanding its provision of water service to suburban communities. Once the Milwaukee Water Works provides retail or wholesale water utility service to that new community or area, Milwaukee will have acquired an ongoing obligation to serve that expanded service area just as it has in its existing service areas.

By way of background, safe drinking water in the state of Wisconsin is considered a public good that is most often provided by municipal entities operating in a business or proprietary capacity. In that regard, the utility obtains its operating revenue from ratepayers not taxpayers. While municipal utilities are obligated to provide water service to all municipal inhabitants who reasonably require it, they may also provide water to areas outside their municipal boundaries either on a wholesale or retail basis. When a municipality has extra water capacity available, it can be particularly cost-effective to serve additional customers because existing costs can be spread over more rate-payers without significantly increasing plant investment.

Urban municipalities may be reluctant to make municipal water available to neighboring suburban communities who then might be perceived to be in a much better position to compete for development. To help facilitate the provisioning of services outside of municipal boundaries while at the same time attempting to protect that community's tax base and revenues, the law provides the opportunity for intergovernmental agreements (Wis. Stat. §§ 66.0301-66.0317).

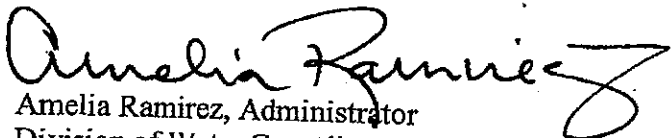
Ms. Carrie Lewis  
Milwaukee Water Works  
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Milwaukee's filed rates require a 25 percent surcharge for suburban service (Mg-2) so Milwaukee is already receiving a premium for its retail service outside its municipal boundaries. Nevertheless, we understand that were Milwaukee to expand its existing retail or wholesale service area, it would be entitled to reasonable cost recovery for any new facilities that would be needed as a result of the expansion in addition to any other negotiated provisions the participating municipalities could agree on.

The Commission does not regulate intergovernmental agreements as long as they do not conflict with our regulatory authority. Again, please be aware that where Milwaukee has already undertaken an obligation to provide water service, either retail or wholesale, it may not subsequently limit that obligation by contract. Likewise, the Commission is not bound by any contract that conflicts with its regulatory obligations. Therefore, we would appreciate the opportunity to review any intergovernmental agreements involving water utility service to help ensure that these are consistent with the Commission's regulatory responsibilities.

Please feel free to contact Jeff Patzke at (608) 266-7165 with any additional questions or thoughts that you might have.

Sincerely,

  
Amelia Ramirez, Administrator  
Division of Water Compliance and Consumer Affairs

AR:JJP:pr: w:\cmt\ramirez 2008\milwaukee-intergovernmental agreement

cc: Jeffry J. Patzke OGC  
John J. Lorence OGC  
David Sheard DWCCA