

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

DERALD MORGAN,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. WC-2021-0223
	)	
CARL RICHARD MILLS	)	
	)	
Respondent,	)	

**MEMORANDA AND EXHIBITS IN SUPPORT OF COMPLAINANT’S  
MOTION FOR SUMMARY DETERMINATION**

COMES NOW Complainant, Derald Morgan, by and through counsel, and on support of its motion before the Missouri Public Service Commission (“Commission”), pursuant to 20 CSR 4240-2.117, for Summary Disposition on Complainant’s *Formal Complaint*, submits the following information for the Commission’s determination:

**PROCEDURAL SUMMARY**

**STANDING**

Complainant, Derald Morgan, is a water utility customer of the Respondent. Respondent, Carl Richard Mills, is a Commission-regulated water utility providing service pursuant to Certificate of Convenience and Necessity issued by the Commission in WA-

**AUTHORITY**

The authority of a ratepayer to file a complaint is set forth in Section 386.390, RSMo., stating a cause of action “setting forth any act or thing done or omitted to be done by any corporation, person or public utility in violation...of any order or decision of

the commission...”.

The effect of “every order or decision of the commission shall of its own force take effect and become operative thirty days after service thereof, and is set forth in Section 386.490, RSMo.

The relevant portion of Section 386.570.1, RSMo 2000, provides:

“[a]ny corporation, person or public utility which ... fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.”

Section 386.570.2, RSMo., indicates that every violation of a Commission order is a separate and distinct offense and that each day's continuance of a violation is also a separate and distinct offense.

Section 386.570.3, RSMo., provides that for purposes of enforcing this penalty provision, the acts of an employee of a public utility, acting within the scope of his or her employment, are to be deemed the acts of the public utility.

Section 386.600, RSMo., allows the Commission's General Counsel to bring an action in circuit court to recover a penalty for the violation of a Commission order.

### **STANDARD OF REVIEW**

Commission Rule 20 CSR 4240-2.117, which is titled “Summary Disposition,” authorizes the Commission to decide all or any part of “a contested case by disposition in the nature of summary judgment or judgment on the pleadings.”

Commission Rule 20 CSR 4240-2.117(1), provides, in relevant part:

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period.

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(E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

### **ARGUMENT**

This is not a case seeking a rate increase, or a case subject to an operation of law date. To grant summary determination in this case will not be “otherwise contrary to law” since no genuine factual dispute remains for hearing, one of the parties is entitled to a determination in its favor as a matter of law, and the contents of the parties' pleadings and its verified statements make it plain that the merits of this controversy can be fairly and fully decided in a summary manner. Moreover, the public interest clearly favors the quick and efficient resolution of this matter by summary determination without an evidentiary hearing inasmuch as “[t]he time and cost to hold hearings on [a] matter when there is no genuine issue as to any material fact would be contrary to the public interest.” *See, e.g., Determination on the Pleadings, The Staff of the Missouri Public Service Commission v. Taney County Utilities Corporation*, Case No. WC-2004-0342 (Oct. 19, 2004). Therefore, the Commission may finally dispose of this case on the basis of the law and the undisputed material facts before it. *Id.*

In *The Staff of the Missouri Public Service Commission v. Laclede Gas Company*, the Commission found summary determination appropriate in considering a complaint against a regulated utility for failure to produce records pursuant to an agreement. See *Report and Order Regarding Motions for Summary Determination*, GC-2011-0006 (Feb. 4, 2011). In *Laclede Gas*, the Commission found that Laclede entered a stipulation and agreement with the Staff concerning “all records of affiliates as may be reasonably required to verify compliance with the CAM (Cost Allocation Manual) and the conditions set forth in the Stipulation and Agreement...and information that is relevant to the Commission’s ratemaking, financing, safety, quality of service and other regulatory authority over Laclede Gas Company.” The Commission found the terms of the stipulation clear and to apply to general discovery requests. Laclede attempted to avoid production of certain documents asserting said documents requested by Staff were not in the custody or control of Laclede. However, the Commission found Laclede waived such a defense in signing the stipulation. The Commission found that Laclede’s statement to a circuit court that it was no longer in possession of responsive documents an admission that it avoided compliance with the Stipulation, and was therefore subject to penalty under Section 386.570, RSMo. The Commission further stated that penalties were necessary to “emphasize to [the utility] that it must comply with the stipulation and agreement and with the Commission’s orders...”

Like *Laclede Gas*, this Complaint concerns a utility’s adherence to the terms of a Commission order; specifically, the Commission’s October 9th, 2019 *Report and Order*

(“Order”) in File No. WA-2018-0370. The Order imposed several reporting requirements for Mills, *inter alia*:

- a. “Mills shall submit a rate case one year after the effective date of the issuance of the Certificate of Convenience and Necessity in this Report and Order.”; and
- b. “Mills shall notify the Commission’s Staff and OPC within one week of any termination of the purported contract with Ozark Clean Water.”; and
- c. “Mills shall initiate a rate case proceeding within two months of any termination of the purported contract with Ozark Clean Water.”

Mills answer and response to the Complaint, it articulates no discernable defenses in its answer. Mills admits that it terminated the contract with Ozark Clean Water in May 2019, and that it informed Staff of the termination in November 18, 2019. Mills states that the discharge of Ozark Clean Water occurred prior to issuance its tariff as a means to relieve it from the obligations set forth in the Order. However, and just like the *Laclede Gas* matter, a company’s conduct to avoid compliance with a commission order is sanctionable. Its Order clearly directed Mills to initiate a new rate case within two months of the termination of the Ozark Clean Water contract. Instead of timely informing the Commission or Staff during the four months prior to the issuance of the Order that Mills had terminated Ozark Clean Water, Mills was silent. Then, Mills failed to timely initiate rate proceedings.

Mills omitted of material facts and failed to make timely disclosures concerning the termination of Ozark Clean Water during the course of the proceedings in File No. WA-2018-0370 to the Commission. Now Mills asserts no wrongdoing on its part

because it could not have complied with those terms concerning Ozark Clean Water of the Commission's Order since they had already been terminated – a convenient circumstance engineered by Mills actions and omission. As a consequence, ratepayers were entitled to a new rate proceeding within two-months of the termination and within a year of the date of the Order, and Mills failed to file for a small rate proceedings until December 15, 2020. Mills admits that the rate case was filed a year after the effective date of the *tariff* – not the Order.

Penalties are appropriate in this circumstance, and pursuant to Section 376.570, RSMo., and in an amount determined by a circuit court in an action commenced by the Commission. *State ex rel. Sure-Way Transp., Inc. v. Division of Transp.*, 836 S.W.2d 23, 27 (Mo. App. W.D. 1992) (relying on *State v. Carroll*, 620 S.W.2d 22 (Mo. App. S.D. 1981)); *see also State ex rel. Cirese v. Ridge*, 138 S.W.2d 1012 (Mo. banc 1940).

### **CONCLUSION**

As the record before the Commission establishes clearly that Mills violated no less than three sections of its Order in WA-2018-0370, Complainant is entitled to summary disposition as to matters set forth in its Complaint.

**WHEREFORE**, Complainant submits this memoranda in support of its motion granting summary disposition as its *Formal Complaint*, and for the Commission to find the utility in violation of its order and to direct its General Counsel to proceed with a civil action for the assessment of penalties against Mills, and for said penalties to be excluded from rate base or assessment against the consumers at a future rate case, and for such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

SCHENEWERK & FINKENBINDER  
ATTORNEYS AT LAW, LLC

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**CERTIFICATE OF SERVICE**

The below signed counsel hereby certifies that a true and accurate copy of the foregoing was submitted through the Missouri Public Service Commission's E-Filing System on November 1, 2021, which generates notices to interested parties.

/s/ Karl Finkenbinder  
Karl Finkenbinder