

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

The Staff of the Missouri Public Service Commission,	)	
	)	
	)	
Complainant,	)	
	)	Case No. WC-2007-_____
v.	)	
	)	
Mike Ward,	)	
	)	
Respondent.	)	

**COMPLAINT  
AND MOTION FOR EXPEDITED TREATMENT**

**COMES NOW** the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, pursuant to Section 386.390, RSMo 2000, and for its Complaint states as follows:

***Introduction***

1. This Complaint concerns Respondent's unlawful provision of water services to the public, for gain, without certification or other authority from the Missouri Public Service Commission.

***Complainant***

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Commission's General Counsel as authorized by Commission Rule 4 CSR 240-2.070(1). Section 386.390.1 provides that "Complaint may be made . . . in writing, setting forth any act or thing done or omitted to be done by any person . . . in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission . . ."

### ***Respondent***

3. Respondent Mike Ward is a natural person operating a water system in Stone County, Missouri, with a principal place of business at 200 Stump Hollow Lane, Branson West, Missouri 65737.

### ***Count I***

#### ***Respondent is Subject to Regulation by the Commission***

4. Section 386.020(58), RSMo, provides:

"Water corporation" includes every ... person ... owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water.

5. Since about November 1, 2005, Respondent has operated or controlled or managed the water system serving the Stump Hollow Subdivision in Stone County, Missouri, and currently provides water service to approximately 21 outlets serving 53 people in the subdivision.

6. On or about June 18, 2006, Respondent Mike Ward sent a letter to his customers demanding payment for March, April, May and June water service for \$20 per month. The letter indicated that future billing would be at a rate of \$20 per month plus \$5.00 per 1000 gallons of use. Attached hereto and incorporated herein by reference as Attachment A is a true and correct copy of Respondent's letter of June 18, 2006.

7. By billing customers in the Stump Hollow Subdivision for water services, Respondent is selling water, or supplying water for gain, within the intendments of Section 386.020(58), RSMo.

8. With respect to the Stump Hollow water systems, Respondent is a water corporation within the intendments of Section 386.020(58), RSMo.

9. Section 386.020(42), RSMo, provides:

"Public utility" includes every . . . water corporation, . . . as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]

10. With respect to the services provided by Mike Ward to the residents of the Stump Hollow Subdivision, Respondent is a water corporation and public utility within the meaning of Section 386.020, (42) and (58), RSMo, and thus subject to the jurisdiction, control and regulation of this Commission.

**WHEREFORE**, Staff prays that the Commission will give notice to Respondent as required by law and, after hearing, find that Respondent, with respect to his operation of supplying water for gain to the residents of Stump Hollow Subdivision, is a water corporation within the intendments of Section 386.020(58), RSMo, and thus a public utility within the intendments of Section 386.020(42), RSMo, and subject to the jurisdiction, regulation and control of this Commission.

## ***Count II***

### ***Unauthorized Provision of Water Service to the Public***

11. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 10, above.

12. Section 393.120 provides that the provisions of Section 386.020 defining words and phrases applies to words and phrases used in Sections 393.110 to 393.290. Thus, Mike Ward is a water corporation and public utility.

13. Section 393.170, RSMo, provides:

1. No . . . water corporation . . . shall begin construction of a . . . water system without first having obtained the permission and approval of the commission.

2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

14. The Respondent does not possess a Certificate of Convenience and Necessity issued by this Commission authorizing him to exercise any right, privilege or franchise to provide water service to the public for gain in the Stump Hollow Subdivision.

15. With respect to Respondent's operation of the water system in the Stump Hollow Subdivision, he has violated Section 393.170, RSMo, by the conduct described in Paragraphs 1 through 10.

**WHEREFORE,** Staff prays that the Commission will give notice to Respondent as required by law and, after hearing, find that Respondent has violated Section 393.170, RSMo, by his conduct with respect to provision of water service to the public in Stump Hollow Subdivision, and further, find that each day of operation in violation of Section 393.170, RSMo, constitutes a separate violation.

### ***Count III***

#### ***Authority to Seek Penalties***

16. Complainant hereby adopts by reference and re-alleges the allegations set out in

Paragraphs 1 through 15, above.

17. Section 386.570, RSMo, provides:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or 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.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

18. Section 386.600, RSMo, provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

**WHEREFORE**, Staff prays that the Commission will give such notice to Respondent as is required by law and, after hearing, in the event that any of the conduct herein described is determined to be a violation of any law of the State of Missouri or of any order, decision, or rule of the Commission, deem each day that such violation existed to be a separate offense and authorize its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law.

***Motion for Expedited Treatment***

19. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 18, above.

20. The Staff seeks expedited treatment of this complaint case under Commission Rule 4 CSR 240-2.080(16) and moves the Commission to order Respondent to file his answer on or before August 18, 2006.

21. The Staff of the Commission contacted the Respondent by letter dated July 13, 2006, requesting that he comply with applicable law and regulations on or before July 31, 2006. Respondent has failed to respond to the Staff's correspondence. See Attachment B incorporated herein by this reference.

22. On or about July 31, 2006, Respondent disconnected water service to two customers for nonpayment of water bills leaving the customers without water service.

23. This pleading was filed as soon as it could have been in that undersigned counsel learned of the situation at Stump Hollow Subdivision on August 1, 2006.

**WHEREFORE**, Staff prays that the Commission will expedite this matter and require Respondent to answer on or before August 18, 2006, and grant such other and further relief as is just and proper.

Respectfully Submitted,

/s/ Steven C. Reed

Steven C. Reed  
Litigation Counsel  
Missouri Bar No. 40616

Attorney for the Staff of the  
Missouri Public Service Commission

P.O. Box 360  
Jefferson City, MO 65102  
573-751-3015 (telephone)  
573-751-9285 (facsimile)  
[steven.reed@psc.mo.gov](mailto:steven.reed@psc.mo.gov)

### **Certificate of Service**

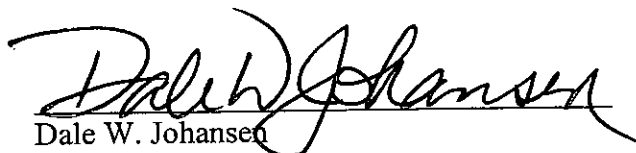
I hereby certify that copies of the foregoing have been sent certified mail, return receipt requested to Mike Ward, 200 Stump Hollow Lane, Branson West, Missouri, 65737, and hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 2nd day of August 2006.

/s/ Steven C. Reed

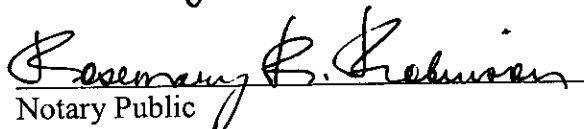
**VERIFICATION**

State of Missouri    )  
                              )  
County of Cole        )

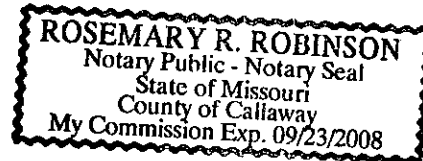
The undersigned, Dale W. Johansen, Manager of the Water and Sewer Department of the Missouri Public Service Commission, being duly sworn, states that he has read the above Complaint and hereby verifies that the allegations therein contained are true and correct to the best of his knowledge, information and belief.

  
Dale W. Johansen

Subscribed and sworn to before me this 2<sup>nd</sup> day of August, 2006.

  
Notary Public

My Commission expires: 9-23-2008.





# Stump Hollow Well

Mike Ward  
200 Stump Hollow Lane  
Branson west MO 65737  
417-338-1190

June 18, 2006

Stump Hollow Well Users

Dear Well Users

This letter is an update on the process of getting our water system up to standard.

We have installed water meters on each property.

We have excavated a ditch and put in drain pipe and crushed rock, to divert surface water away from the well.

We have removed the water softener from the well house.

We have been sending in multiple water samples per month.

All of these activities have cost money. Funds available in the well account do not begin to cover the amounts due the workers and suppliers.

The Department of Natural Resources is going to require us to install a chlorinator and storage tank to sanitize the well water.

There are no funds available for this work. We have outstanding unpaid bills as follows:

Mike Striegler; \$ 975.- Mike Ward; \$ 2004.55, Tim Kriegel; \$80.34

In order to move forward to getting reliable, clean water to our properties, we must raise enough funds to pay for work already done, and to pay for the work ahead.

Failure to complete this work promptly will cause major pressure from the DNR.

The last assessment covered service thru March 1

Based on all of the above we need payments from each user as follows.

March, April May and June = \$20/month X 4 Months = \$80.00 Please pay promptly. Please make arrangements for me to have access to read your meter by the end of June to get a starting reading for future billing.

Future billing will be at the rate of \$20.00/month plus \$5.00 per 1000 gallons of use.

Sincerely,

Mike Ward

Attachment A



**Commissioners**

**JEFF DAVIS**  
Chairman

**CONNIE MURRAY**

**STEVE GAW**

**ROBERT M. CLAYTON III**

**LINWARD "LIN" APPLING**

***Missouri Public Service Commission***

POST OFFICE BOX 360  
JEFFERSON CITY MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.mo.gov>

**WESS A. HENDERSON**  
Executive Director

**DANA K. JOYCE**  
Director, Administration and  
Regulatory Policy

**ROBERT SCHALLENBERG**  
Director, Utility Services

**WARREN WOOD**  
Director, Utility Operations

**COLLEEN M. DALE**  
Secretary/Chief Regulatory Law Judge

**KEVIN A. THOMPSON**  
General Counsel

July 13, 2006

Mike Ward  
200 Stump Hollow Lane  
Branson West, Missouri 65737

RE: Water Service to Stump Hollow Subdivision

Mr. Ward:

This is a follow-up to and record of your telephone conversation of June 23, 2006 with Jerry Scheible of the Water & Sewer Department, concerning the status of the water system in the Stump Hollow Subdivision that you own and operate.

During that conversation, it was noted that you are providing water service for a fee to the Stump Hollow Subdivision. As a result, it appears your water system is subject to Public Service Commission (PSC) regulatory requirements.

A response outlining your intentions is hereby requested, and it is suggested that you obtain counsel or guidance in order to assist you with one of the following tasks:

- File an application with the PSC for a Certificate of Convenience and Necessity to become a PSC-regulated utility;
- Make arrangements for the existing Stump Hollow Property Owners Association to take over and operate the utility;
- Set up a non-profit water company to take over and operate the utility;
- Sell or transfer the utility to a non-regulated water district; or
- Sell or transfer the utility to an entity that is willing to operate it as a PSC-regulated utility.

You have expressed your opinion that because your water system is small and you do not intend to make a profit from it, you are not in favor of becoming a PSC-regulated water utility. However, at this point there are no other options available to you in accordance with the laws of the State of Missouri – unless you pursue one of the last four options listed above.

**Attachment B**

Letter to Mike Ward  
RE: Non-Regulated Water Utility Service  
July 13, 2006 – Page 2 of 2 Pages

Your response to this letter, indicating which of the above options you are going to choose with regard to the subject water system, is requested by July 31, 2006. Failure to respond by that date will result in the Water & Sewer Department initiating the filing of a formal complaint with the Commission, which could result in the Commission authorizing its General Counsel to seek penalties against you for violations of State law in addition to finding that the water system should be regulated by the Commission.

Please feel free to contact me, or Jerry Scheible of my staff, if you have any questions regarding this matter. My direct telephone number is 573-751-7074 and my e-mail address is [dale.johansen@psc.mo.gov](mailto:dale.johansen@psc.mo.gov). Jerry's direct telephone number is 573-526-6029 and his e-mail address is [jerry.scheible@psc.mo.gov](mailto:jerry.scheible@psc.mo.gov).

Sincerely,

/s/ Dale W. Johansen

Dale W. Johansen – Manager  
Water and Sewer Department

Copies: Sandy Hollingsworth – Stump Hollow Homeowners Association  
Lewis Mills – Office of the Public Counsel  
Mike Dandino – Office of the Public Counsel  
Warren Wood – PSC Staff  
Kevin Thompson – PSC Staff  
Keith Kruger – PSC Staff  
Jim Merciel – PSC Staff  
Jim Russo – PSC Staff  
Jerry Scheible – PSC Staff  
Bill Nickle – PSC Staff