

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 21st day  
of September, 2006.

The Staff of the Missouri	)	
Public Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
Mike Ward,	)	
	)	
Respondent.	)	

**Case No. WC-2007-0042**

**ORDER GRANTING MOTION TO SET ASIDE  
DEFAULT AND GRANTING APPLICATION  
FOR LEAVE TO FILE ANSWER OUT OF TIME**

Issue Date: September 21, 2006

Effective Date: September 21, 2006

On August 2, 2006, the Staff of the Commission filed a complaint against Mike Ward that alleges that Mr. Ward supplies water to the Stump Hollow Subdivision in Stone County, Missouri without the required certificate of convenience and necessity. Staff asks the Commission to find that Mr. Ward's water service is subject to the Commission's jurisdiction, to find that each day that Mr. Ward provides water without the required certificate is a separate violation of Section 393.170, RSMo,<sup>1</sup> and to authorize the General Counsel to seek penalties against Mr. Ward in circuit court for the above violations.

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<sup>1</sup> Unless stated otherwise, all statutory references are to Revised Statutes of Missouri 2000.

In addition to the complaint, Staff filed a Motion for Expedited Treatment, asking the Commission to require Mr. Ward to answer the complaint no later than August 18. The Commission granted Staff's motion and ordered Mr. Ward to answer no later than August 18. Despite the Commission's electronic filing information system (EFIS) showing that Mr. Ward received the complaint on August 7, he failed to respond. Based upon that failure, the Commission issued an Order Granting Default on August 31.

On September 5, Mr. Ward filed a Motion to Set Aside Default Judgment, an Application for Leave to File Answer Out of Time and an Answer. In his Motion to Set Aside Default Judgment, Mr. Ward stated that he originally failed to see the difference between this complaint and a separate petition for injunctive relief that the Commission filed in the Circuit Court of Stone County.<sup>2</sup> Mr. Ward stated that Staff does not object to the Commission setting aside the default, and that good cause exists for the Commission to decide this case on the merits.

In response, Staff stated that it did not object to Mr. Ward's motion and that it leaves the determination of good cause for the Commission. Furthermore, Staff stated that it and Mr. Ward are working towards resolution of this case and the circuit court case.

Commission Rule 4 CSR 240-2.070(9) states that a party seeking to set aside a default order has seven days from the date of the order to set it aside. Mr. Ward timely filed his motion to set aside. That same rule allows the Commission to set aside a default order if it finds good cause. Based upon Mr. Ward's confusion of this case with a circuit court case concerning the same subject-matter, the shortened time Mr. Ward had to answer the complaint, and Staff's lack of objection to Mr. Ward's motion, the Commission finds good

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<sup>2</sup> Circuit Court of Stone County Case No. 06SN-CC00114

cause exists to set aside the default order. In addition, the Commission will grant Mr. Ward's Application for Leave to File Answer Out of Time, and will accept Mr. Ward's answer.

**IT IS ORDERED THAT:**

1. The Motion to Set Aside Default Judgment is granted.
2. The Application for Leave to File Answer Out of Time is granted.
3. The Commission's Order Granting Default is hereby set aside.
4. This order shall become effective on September 21, 2006.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,  
and Appling, CC., concur.

Pridgin, Senior Regulatory Law Judge