

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 10th day of March, 2021.

Derald Morgan,)	
)	
Complainant,)	
)	
v.)	<u>File No. WC-2021-0223</u>
)	
Carl R. Mills Water Service d/b/a Carl)	
Richard Mills,)	
)	
Respondent)	

ORDER DENYING MOTION TO CONSOLIDATE

Issue Date: March 10, 2021

Effective Date: March 10, 2021

On January 13, 2021, Derald Morgan filed a formal complaint against Carl R. Mills Water Service d/b/a Carl Richard Mills. The complaint alleges that Carl Richard Mills violated a Commission order by not notifying the Commission of the termination of his contract with the system operator. The complaint further alleges that the rates for water service set in File No. WA-2018-0370 were premised on Carl Richard Mills' contracting with a third party system operator for management of the water system. The complaint also alleges that Carl Richard Mills violated a Commission order by not timely initiating a rate case. The complaint seeks penalties, and asks that they be structured such that payment of the penalties will not be recovered from rate payers. Concurrent with filing his complaint, Mr. Morgan requested that the complaint be consolidated with the current rate

case of Carl Richard Mills, File No. WR-2021-0177.¹ The Commission will address the consolidation motion in this order.

The Commission set a deadline for responses to the motion to consolidate cases. The Staff of the Missouri Public Service Commission (Staff) responded in favor of consolidation. Carl Richard Mills did not respond to the motion to consolidate.

Mr. Morgan argued that disposition of the complaint may affect utility accounting in the rate case. Staff notes that the claims made in the complaint are the types of issues Staff reviews in the normal course of a rate case, and it would be administratively burdensome and redundant to keep the cases separate. No other responses or arguments were received.

Consolidation of cases is permissible under the rules of the Commission when there are related questions of law or fact.² However, the Commission is unpersuaded that there are related questions of law or fact sufficient to support consolidation. The Commission is further unpersuaded that the consolidation of these cases will result in any administrative savings such that unnecessary costs or delay would be avoided. The Commission acknowledges that some of the information uncovered in the rate case may be repeated in the complaint, and even that the rate case in the normal course of business would already perform a review of the system operator, but notes that the two cases have many differences.

One difference between the cases is the timeline, as staff-assisted rate cases have certain deadlines not applicable to complaints.³ Another difference is the legal purpose of

¹ Also pending is a Motion to Show Cause or Strike Responses which is not addressed here.

² 20 CSR 4240-2.110(3).

³ 20 CSR 4240-10.075

the case – a rate case’s purpose is to set just and reasonable rates while a complaint’s purpose is to determine if a statute, Commission Rule, order, or tariff has been violated. The burden of proof also differs, with the utility bearing the burden of proof in a rate case, and the complainant bearing a separate burden of proof in a complaint case.

Additionally, while the complaint may have a connection to the rate case, the numerous and varied issues involved in a rate case would not be relevant to the complaint. Finally, the Commission foresees that judicial economy is likely to suffer, rather than benefit, from consolidation as the rate case may conclude but not be able to move forward if it is consolidated to a complaint that has not yet reached a conclusion.

The Commission finds the motion to consolidate the two cases unreasonable, and will deny it.

THE COMMISSION ORDERS THAT:

1. The motion of Mr. Morgan to consolidate this complaint, WC-2021-0223, with the rate case of Carl Richard Mills, WR-2021-0177, is denied.
2. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Hatcher, Regulatory Law Judge