

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

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

COMPLAINANT’S MOTION FOR SUMMARY DETERMINATION

COMES NOW Complainant, Derald Morgan, by and through counsel, and moves the Commission, pursuant to 20 CSR 4240-2.117, for Summary Disposition on Complainant’s *Formal Complaint*. In support hereof, Complainant states:

1. On October 9, 2019, the Public Service Commission (“Commission”) issued its *Report and Order* (“Order”) in File No. WA-2018-0370, establishing a CCN for Respondent Carl R. Mills Water System (“Mills”) to provide regulated water utility service to a subdivision known as Carriage Oaks Estates. The Order imposed a number of requirements on 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.”

See Exhibit 1, Report and Order, WA-2018-0370.

The Commission’s Order became effective on November 8, 2019.

2. On December 15, 2020, Mills initiated a small rate case proceeding before the Commission in WR-2021-0177. *See Exhibit 2, Small Rate Case Application, WR-2021-0177.*

3. On January 13, 2021, Complainant’s *Formal Complaint* was filed, and alleged numerous violations of the Commission’s *Order* in WA-2018-0370 by Respondent Carl R. Mills Water System (“Mills”), namely:

- a. Mills failed to notify the Commission concerning the termination of Ozark Clean Water Company; and
- b. Mills failed to initiate a rate proceeding within two months of the contract with Ozark Clean Water Company.

See Exhibit 3, Formal Complaint.

The complaint did not seek to challenge the reasonableness of tariff rates. Rather, Complainant sought the enforcement of the Commissioner *Order* for the purpose of (i) notifying the Commission as to the utility operator’s failure to comply with its *Order*, and (ii) for the assessment of penalties against the operator to dissuade the operator from future non-compliance with the Commission’s rules and orders.

4. As set forth in the legal memoranda and the exhibits hereto, Mills admits to canceling the contract with Ozark Clean Water Company, with the final works performed

by Ozark Clean Water, on or about May 20, 2019. *See Exhibit 4, Respondent's Answers and Responses*, Response #2. Mills admits to not communicating the May 2019 cancellation of Ozark Clean Water's contract until November 18, 2019 (and after the effective date of the Order). *See Ex. 4*, Response #2. Mills did not commence with a rate case either, (i) within two months of the cancellation, or (ii) within two months of the effective date of the Order and ultimately failed to commence its rate case after the one-year term of the effective date of the Order, in violation of the terms of the Order. *See Ex. 2*.

5. The Commission Staff ("Staff") states that it received notice of the termination of the contract with Ozark Clean Water in November 2019; more than five months after the fact, and thirteen months prior to the initiation of any rate case proceeding. *See Exhibit 5, Staff's Responses to Complainant's Interrogatories, Response #2*. Staff states that Mills did not initiate a rate case within two months of the termination of its business relationship with Ozark Clean Water. *See Ex. 5, Response #6*. Staff admits that it relied on the contract services for Ozark Clean Water in preparing its estimated annualized expenses in Case No. WA-2018-0370. *See Ex. 5, Response #4*.

6. The uncontested record before the Commission is that Mills violated its *Order* in no less than three distinct manners:

- a. Mills failed to initiate a rate case within one year of the effective date of the *Order*, and whose violation continued for 37 days until December 15, 2020; and

- b. Mills failed to notify the Commission within one week of the termination of Ozark Clean Water, and whose violation continued from two weeks after the effective date of the *Order* through the filing of this *Complaint* (being the date the Commission was notified of the termination) and being at least 432 dates;
- c. Mills failed to initiate a rate case proceeding within two months of the effective date of the *Order* (being January 8, 2020) and until December 15, 2020, being at least 342 days.

7. The basis of the rates established by the *Order* was made in completion of the service contract with Ozark Clean Water, and the failure or refusal to timely file notice of cancellation of that contract or otherwise timely initiate a rate proceeding exposed ratepayers, including the Complainant, to unjust costs.

8. Section 386.570, RSMo., provides that failure of a public utility to comply with a Commission order “is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense” and that “[e]very violation...is a separate and distinct offense, and in case of a continuing violation each day’s continuance shall be deemed a separate and distinct offense.”

9. Based on the record before the Commission, Mills is liable for at least \$81,100 and at most \$1,622,000 in penalties for failure to comply with the Commission’s *Order*, though the ultimate amount would be determined by a civil court.

10. Summary disposition is appropriate in this matter, as the uncontested facts before the Commission show that Mills violated the Commission’s *Order*.

11. This motion is filed in compliance with the Commission's order to the Complainant on the status of the proceeding.

WHEREFORE, Complainant prays for an order 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
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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