

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

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	
vs.	)	<b><u>Case No. WC-2023-0353</u></b>
	)	
Leon Travis Blevins a/k/a Travis Blevins and Patricia Blevins, d/b/a Misty Mountain PWS a/k/a Misty Water Works, Charity PWS, and Rolling Hills PWS	)	
	)	
Respondents.	)	

**LIST OF ISSUES AND POSITION STATEMENTS,  
LIST AND ORDER OF WITNESSES, AND  
ORDER OF OPENING STATEMENTS**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and files the following *List of Issues and Position Statements, List and Order of Witnesses, and Order of Opening Statements*, in satisfaction of the Commission’s June 12, 2024 *Order Directing Filing*:

**LIST OF ISSUES AND POSITION STATEMENTS**

1. Is Leon Travis Blevins a/k/a Travis Blevins and Patricia Blevins d/b/a Misty Mountain PWS a/k/a Misty Mountain PWS, Charity PWS, and Rolling Hills PWS (“Travis Blevins, et al.”) operating as a water corporation pursuant to § 386.020(59), RSMo, and a public utility pursuant to § 386.020(43), RSMo?

a. Yes. It is Staff’s position that Respondent Travis Blevins, et al., is a water corporation and is operating as a public utility subject to the jurisdiction, control, and regulation of the Commission pursuant to § 386.020(43), RSMo, in that Respondent Travis Blevins, et al., owns, operates, controls

or manages a water supply distributing or selling for distribution, or selling or supplying for gain to the public for provision of this utility service. Missouri courts have held that entities act as public utilities when they sell water to the public for compensation and have undertaken the responsibility to provide water service to all members of the public within their capability.<sup>1</sup>

2. Is Travis Blevins, et al., engaging in the unlawful provision of water services to the public for gain, without certification or other authority from the Missouri Public Service Commission (“PSC” or “Commission”), in violation of § 393.170.2, RSMo?

a. Yes. It is Staff’s position that Respondent Travis Blevins, et al., is operating a water utility for gain without a Certificate of Convenience and Necessity (CCN) from the Missouri Public Service Commission, in violation of § 393.170.2, RSMo.

3. Should Travis Blevins, et al., be ordered to file an application with the Commission requesting a CCN as a water corporation and be regulated as a public utility?

a. No. It is Staff’s position that Respondent Travis Blevins, et al., should not be ordered to file and should not be granted a CCN as a water corporation and be regulated as a public utility, in that Travis Blevins, et al., is not qualified to provide the service, it would not be feasible, and granting it would be detrimental to the public service, as outlined in the *Staff Recommendation* filed in Case No. WA-2023-0418

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<sup>1</sup> *Hurricane Deck Holding Co. v. Public Service Commission*, 289 S.W.3d 260, 264-5 (Mo. App., W.D. 2009); *Osage Water Co. v. Miller County Water Authority, Inc.*, 950 S.W.2d 569, 573-5 (Mo. App., S.D. 1997).

on August 15, 2023, a copy of which is attached hereto and made a part hereof as **Attachment A**.

- b. Due to the unsustainable nature of the situation found by Staff regarding Respondent Travis Blevins, et al., as outlined in the *Complaint* filed herein, and in the Staff Recommendation, referred to above, Staff recommends that should Respondent Travis Blevins, et al., choose to continue to operate water utilities as it has been, the Commission should appoint an interim receiver to operate the system(s) until a utility with the financial and technical ability to operate the system(s) can be found.<sup>2</sup>
4. Is Travis Blevins, et al., engaging in utility service in such a manner as to endanger public health, in violation of § 393.130.1, RSMo?
  - a. Yes. It is the Staff's position that the manner in which Travis Blevins, et al., is operating and maintaining or failing to maintain the wells and well system(s) known as Misty Water Works and/or Misty Mountain PWS, Charity PWS, and Rolling Hills PWS endanger and constitute a threat to the public health and safety, in violation of § 393.130.1, RSMo.
5. Is Travis Blevins, et al., subject to penalties as provided by § 386.570, RSMo, due to its violations of chapter 393, RSMo?
  - a. Yes. It is Staff's position that due to its violations of chapter 393, RSMo, Respondent Travis Blevins, et al., is subject to penalties should the Commission determine penalties are appropriate.

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<sup>2</sup> The Staff filed a *Petition for an Interim Receiver and for an Order Directing the General Counsel to Petition the Circuit Court of Cole County for the Appointment of a Receiver for Misty Water Works and Motion for Expedited Treatment* with this Commission, Case No. WO-2024-0036, on August 15, 2023. A hearing on that *Petition* was held on October 25 and 26, 2024, but no decision has yet been rendered in that case.

b. Staff takes no position on the amount of penalties to assess.

6. Should Travis Blevins, et al., be ordered to submit all of the wells he owns to inspection by the Missouri Department of Natural Resources (MDNR) and make such necessary and desirable improvements to each and every well operation and system, including, but not limited to Misty Mountain PWS, Charity PWS, Rolling Hills PWS, and all other such wells providing water services to homeowner residents, as MDNR may recommend in order to safeguard the public health and safety and to maintain and operate its line, plant, system, equipment, apparatus, and premises in such a manner as to promote and safeguard the health and safety of its customers and the public, pursuant to and as authorized by § 386.310, RSMo?

a. Yes. It is Staff's position that due to the violations of chapter 393, RSMo, Respondent Travis Blevins, et al., should be ordered to submit all of the wells he owns to inspection by the MDNR and make such necessary and desirable improvements to each and every well operation and system, including, but not limited to Misty Mountain PWS, Charity PWS, Rolling Hills PWS, and all other such wells providing water services to homeowner residents, as MDNR may recommend, pursuant to and as authorized by § 386.310, RSMo.

b. Staff takes no position on the types of inspections and improvements to be ordered by the Commission and/or the MDNR.

7. Should the Commission authorize the Commission's General Counsel to commence an action or proceeding in Circuit Court, pursuant to § 386.360, RSMo, for the purpose of having violations or threatened violations of chapter 393, RSMo, stopped and

prevented either by mandamus or injunctions and to specifically forthwith submit all of the wells Blevins, et al., owns to inspection by MDNR and make such necessary and desirable improvements to each and every well operation and system, including, but not limited to Misty Mountain PWS, Charity PWS, Rolling Hills PWS, and all other wells owned by Respondents providing water services to homeowner residents, as MDNR may recommend in order to safeguard the public health and safety and to maintain and operate its line, plant, system, equipment, apparatus, and premises in such a manner as to promote and safeguard the health and safety of its customers and the public?

- a. Yes. It is Staff's position that due to its violations of chapter 393, RSMo, Respondent Travis Blevins, et al., the Commission should authorize the Commission's General Counsel to commence an action or proceeding in Circuit Court, pursuant to § 386.360, RSMo, for the purpose of having violations or threatened violations of chapter 393, RSMo, stopped and prevented either by mandamus or injunctions and to specifically forthwith submit all of the wells Blevins, et al., owns to inspection by MDNR and make such necessary and desirable improvements to each and every well operation and system, including, but not limited to Misty Mountain PWS, Charity PWS, Rolling Hills PWS, and all other wells owned by Respondents providing water services to homeowner residents, as MDNR may recommend in order to safeguard the public health and safety and to maintain and operate its line, plant, system, equipment, apparatus, and premises in such a manner as to promote and safeguard the health and safety of its customers and the public.

- b. Staff takes no position on the type of action or proceeding the Commission should authorize the Commission's General Counsel to commence or be ordered to be taken.

**LIST AND ORDER OF WITNESSES**

**Staff**

Jeff Grube  
Lori Jean  
Jackie Johnson  
Dalton Young  
Adam Stamp  
Curt Gateley

**Leon Travis Blevins**

Leon Travis Blevins

**ORDER OF OPENING STATEMENTS**

**Staff**

**Leon Travis Blevins**

**WHEREFORE**, the Staff respectfully submits this *List of Issues and Position Statements, List and Order of Witnesses, and Order of Opening Statements* in this case for the Commission's consideration.

Respectfully submitted,

**/s/ Carolyn H. Kerr**

Missouri Bar # 45718

Senior Staff Counsel

Missouri Public Service Commission

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*Attorney for Staff of the*

*Missouri Public Service Commission*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 17<sup>th</sup> day of June, 2024, to all counsel of record.

**/s/ Carolyn H. Kerr**

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

In the Matter of Leon Travis Blevins d/b/a )  
Misty Water Works Application for a Certificate of )  
Convenience and Necessity Authorizing it to )  
Install, Own, Acquire, Construct, Operate, )  
Control, Manage and Maintain a Water System )  
in an area of Pulaski County, Missouri )

**File No. WA-2023-0418**

**STAFF RECOMMENDATION**

**COMES NOW** the Public Service Commission Staff (“Staff”), by and through counsel, and recommends that the Commission deny Leon Travis Blevins d/b/a Misty Water Works (“Blevins” or the “Applicant”) a Certificate of Convenience and Necessity (“CCN”) to provide regulated water services in an area of Pulaski County, Missouri. In support of this Recommendation, Staff states as follows:

1. On June 13, 2023, Leon Travis Blevins d/b/a Misty Water Works filed its *Application for Certificate* (“Application”) seeking a CCN for authority to install, own, acquire, construct, operate, control, manage, and maintain a water system in an area of Pulaski County, Missouri.

2. On June 15, 2023, the Commission issued its *Order Directing Notice, Setting Deadline for Intervention Requests, and Directing Filing of Staff Recommendation*, setting an intervention deadline of July 12, 2023, and ordering Staff to file its recommendation regarding Blevin’s Application no later than August 9, 2023. No intervention requests were received.

3. Commission Rules 20 CSR 4240-2.060 and 20 CSR 4240-3.600 set forth the requirements for Applications for a CCN by a water company. Mr. Blevins’ Application in this matter failed to comply with the following provisions:



- a. Blevins fails to include a copy of the registration of the fictitious name(s) of any of the businesses under which he is operating with the Secretary of State, as required by 20 CSR 4240-2.060(1)(E);
  - b. The Application fails to include most of the legal descriptions of the service areas, as required by 20 CSR 4240-3.600(1)(A)3;
  - c. The Application fails to include most of the service area maps, as required by 20 CSR 4240-3.600(1)(A)4; and
  - d. The Application's feasibility study does not include estimated construction costs for three years, plans for financing, and revenues and expenses for three years, as required by 20 CSR 4240-3.600(1)(A)5.
4. Furthermore, the Applicant filed his Application without satisfying the 60 day notice requirement of 20 CSR 4240-4.017(1) and at no time did he file or otherwise request a waiver from it as allowed by 20 CSR 4240-4.017(1)(D).
5. Pursuant to § 393.170, RSMo, no water corporation shall provide service to consumers without first having obtained approval from the Commission. In determining whether or not to grant such approval, the Commission has traditionally applied the five "Tartan Criteria" established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994): (1) there must be a need for the service; (2) the applicant must be qualified to provide the service; (3) the applicant must have the financial ability to provide service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.
6. As explained in the Staff *Memorandum*, attached hereto and incorporated herein by reference as Appendix A, Staff conducted an investigation into Blevin's request.

Based upon its review, Staff concludes that the Applicant fails the requirements of all five of the Tartan Criteria.

7. Accordingly, Staff recommends the Commission deny granting the Applicant's request for a CCN as not being required by the public convenience and necessity, in that the Applicant is not qualified to provide the service, it would not be economically feasible, and granting it would be detrimental to the public interest.

**WHEREFORE**, Staff respectfully submits this Staff Recommendation for the Commission's information and consideration, and requests the Commission deny Leon Travis Blevins d/b/a Misty Water Works a Certificate of Convenience and Necessity to provide water service to the requested service area.

Respectfully submitted,

**/s/ Carolyn H. Kerr**

Missouri Bar No. 45718

Senior Staff Counsel

Missouri Public Service Commission

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Attorney for Staff of the

Missouri Public Service Commission

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 15<sup>th</sup> day of August, 2023, to Leon Travis Blevins and the Office of Public Counsel.

**/s/ Carolyn H. Kerr**

## MEMORANDUM

**TO:** Missouri Public Service Commission Official Case File  
Case No. WA-2023-0418, Leon Travis Blevins d/b/a Misty Water Works

**FROM:** Curtis B. Gateley – Water, Sewer & Steam Department  
Adam Stamp – Water, Sewer & Steam Department  
Andrew Harris, P.E. – Water, Sewer & Steam Department

/s/ Adam Stamp / 08-15-2023  
Research/Data Analyst  
Water, Sewer & Steam Dept. / Date

**SUBJECT:** Staff’s Recommendation to Deny the Application and Request for Certificate of Convenience and Necessity

**DATE:** August 15, 2023

### Case Background

On June 13, 2023, Leon Travis Blevins d/b/a Misty Water Works (“Blevins,” or “Applicant,”), filed an *Application for Certificate* (“Application”) with the Missouri Public Service Commission (“PSC” or “Commission”), seeking permission and approval for a Certificate of Convenience and Necessity (“CCN”) to own, operate, maintain, control, and manage a water system located in Pulaski County, Missouri. The water system, called Misty Water Works, is currently being operated without a CCN, and consists of 19 wells with approximately 100 customers in several small subdivisions in Pulaski County. This case stems from a Complaint filed on April 10, 2023, by the Staff of the Commission (“Staff”) in Case No. WC-2023-0353.

On June 15, 2023, the Commission issued its *Order Directing Notice, Setting Deadline for Intervention Requests, and Directing Filing of Staff Recommendation* (“Order”) for WA-2023-0418. The Order directed the Commission’s Data Center and Public Policy and Outreach Department to send out notices regarding the Application, and established a deadline of July 12, 2023, for interested parties to submit requests to intervene in the case. No other parties requested to intervene in the case. The Commission established an initial deadline of August 9, 2023, for Staff to file a request for an extension of time or its Recommendation regarding Blevins’ Application. Staff expects to receive Blevins’ answer to the related Complaint case WC-2023-0353, or a request for more time, no later than September 7, 2023.

### Background of Leon Travis Blevins and Misty Water Works

Misty Water Works operates as a water provider for approximately 100 residential homes in Pulaski County, Missouri. Its primary business location is in St. Robert, Missouri. Misty Water Works, owned and operated by Leon Travis Blevins, has not been registered as a business entity with the Missouri Secretary of State as of the date of this Recommendation.

Misty Water Works appears to focus on providing water service to rural neighborhoods, although the extent of Mr. Blevins' business activities are unclear. Mr. Blevins has, or had, a business relationship with certain subdivision developers in Pulaski County. The standard practice of these developers was to install a well, connect three to ten residential homes, then drill another well and begin again. As neighborhoods continue to develop, additional wells are installed for the next round of homes, with no centralized distribution system being installed. Mr. Blevins then supposedly purchases the wells or easement rights and begins billing the homeowner a monthly charge for water service. The effort of constructing these undersized wells with few connections appears to have been purposefully designed to avoid compliance with Missouri Department of Natural Resources ("DNR") regulations.

### **Staff's Investigation**

Staff first became aware of Mr. Blevins in 2019, but the scale and type of water service Mr. Blevins was providing to residents in the area was not apparent at that time. Customers also chose, at that time, not to cooperate with Staff's investigation. However, in 2022, the DNR began to investigate Mr. Blevins due to customers experiencing water quality issues. DNR's investigations began in August 2022, when it issued a boil order due to high levels of *E. coli* in the Misty Mountain Public Water System ("PWS"), followed by additional Assessments and Notices from September 2022 through January 2023. DNR subsequently contacted PSC Staff to further investigate the water system. After learning of the extent and severity of the situation, Staff filed its Complaint on April 10, 2023.

Staff's investigation revealed that the size of Misty Water Works' operations is significantly larger than Staff was originally aware. Three of the neighborhoods to which the Applicant supplies water now qualify as a PWS under DNR regulations (15 or more connections, or serving 25 or more people for more than 60 days per year). Being designated as a PWS requires the water systems be regulated by DNR, including that those systems be operated by a certified Drinking Water Distribution operator, and that water samples are routinely collected for quality tests. Furthermore, during DNR's 2022 investigation, the water quality concerns were confirmed, as one well had to be placed under a boil order due to *E. coli* contamination<sup>1</sup>. When these concerns were not addressed by Mr. Blevins in a timely matter, DNR contacted Staff for assistance as well as conducted their own enforcement activities.

As part of its investigation, Staff attempted to determine the full extent of Mr. Blevins' and Misty Water Works' operations and ownership interests. However, Staff is unable to ascertain the boundaries of Mr. Blevins' requested CCN. The only descriptions of the property are included in

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<sup>1</sup> The DNR imposed boil order was instituted on August 16, 2022. However, the well failed at the beginning of April 2023, and that system was connected the Pulaski County Water Supply District #2 (PWSD). The well is currently unusable and considered inactive.

Appendices 2 and 3 attached to the Application. In fact, Appendix 2, titled “Platted Maps,” has a handwritten note under the title stating, “PLATTED MAPS ARE PENDING RESEARCH WHERE PRESENTLY UNAVAILABLE.” Mr. Blevins admits some of the platted maps are missing. And in Appendix 3, Mr. Blevins failed to include legal descriptions or plat maps for all wells and easements, and of these legal descriptions, many are incomplete. One plat map even includes a hand drawn and notated area where Mr. Blevins *believes* the well is located.

In addition, it is unclear whether Mr. Blevins has an ownership interest in all wells and easements included in this requested CCN. Staff reviewed Pulaski County property records, and based on its review, opines that Mr. Blevins and his wife, Patricia Blevins likely own and/or have easement rights for only some of the wells. However, most wells appear to be owned by other individuals and organizations, including the owners of the land on which the wells sit, the subdivision developers (the Rowdens), and Mr. Blevins’ son, Ronald Blevins. Nevertheless, Misty Water Works manages each of the mentioned 19 wells, their distribution systems, and customer relations. Please see the chart, below.

Well	Connections	Location	DNR PWS	Well Owner
MW01 (Tigger #1)	10	St Robert	Misty Mountain	? (Nathan Sampson is landowner)
MW02 (Trisha)	4	St Robert	Misty Mountain	Ronald Blevins
MW03 (Taylor)	6	St Robert	Misty Mountain	Ave Maris Stella LLC
MW04 (Tigger #2)	5	St Robert	Misty Mountain	HOME LLC
MW05 (Topo)	5	St Robert	Misty Mountain	? (Jeff Boyd is landowner)
MW06 (Rustler)	9	Richland	No	?
MW07 (Rolling Hills)	10	Richland	Rolling Hills	HOME LLC
MW09 (Carthage)	3	Dixon	No	? (Nicolas Perez is landowner)
MW12 (Chicago)	3	Dixon	No	Mahurin Charity
MW13 (Corvair)	3	Dixon	No	Kevin Rowden
MW15 (Charity PP #1)	4	Dixon	Charity	? (Mark & Tina Rowden landowner)
MW16 (Charity PP #2)	8	Dixon	Charity	HOME LLC
MW17 (Charity #1)	4	Dixon	Charity	? (Brendon Brewer is landowner)
MW18 (Charity #2)	10	Dixon	Charity	Leon T & Patricia Blevins
MW19-20 (Corvair #2-3)	6	Dixon	No	? (Landowners)
MW21 (Ridge)	2	Waynesville	No	Leon T & Patricia Blevins
MW22 (Rowden #1)	3	Waynesville	No	Mark & Jeanie Rowden
MW23 (Rowden #2)	2	Waynesville	No	Mark & Jeanie Rowden
MW24 (Rowden #3)	4	Waynesville	No	Mark & Jeanie Rowden

Additionally, consumer complaints received by PSC Staff in January and February of 2023 indicated the Applicant had implemented rate increases upon the customers.<sup>2</sup> The majority of the informal customer complaints came from a water system referred to as “Rowden.” Mr. Blevins increased their water rate from \$35 per month to a maximum \$70 per month for each household (\$55 base rate and an additional \$15 for pools or livestock for those with pools or livestock). Some customers who filed complaints provided Staff with notices of past due bills, notices of future rate increases, notices of ownership change, and an introduction from the Applicant.

<sup>2</sup> C202300642, C202300644, C202300645, C202300646, C202300647, C202300649, C202300657

These documents demonstrate Misty Water Works is billing for service and operating as a utility without possessing a CCN.

Staff visited the area on February 16, 2023, where it observed the majority of the Applicant's distribution systems and found that the maintenance and cleanliness of the well houses was typically less than desirable. Many of the well houses were very dirty, with ample evidence of rodents on the inside around the water equipment. Some of the well houses had structural issues that allow outside elements to effect the water infrastructure, including plumbing, pressure tanks, electrical connections, or the well itself. Customers reported that during some winters, the well head had frozen. Some of the well houses were incapable of being properly secured against tampering in their current condition.

The Topo Drive well, which is part of the Misty Mountain PWS system, tested positive for *E. coli* in August 2022. Although the DNR's requested excavation of the well has still not taken place, it was believed that the well's pitless adapter<sup>3</sup> had broken and began to separate from the main structure. This allowed surface water, mud, and other outside debris to percolate into the water supply, and customers reported seeing these materials inside their home's water systems. The Applicant was unable to correct this issue in a satisfactory time, which led to DNR imposing a boil order in August 2022. The well was still on that DNR boil order in April 2023, when the well failed completely. Mr. Blevins initially refused to find an alternative water source for customers, so the PSC Staff began planning to file for an emergency injunction. After three days without water, customers contacted the Pulaski County Water Supply District #2 ("PWSD") and were able to connect to a service line that had been previously installed but closed long ago. With the issue temporarily resolved, PSC Staff abandoned pursuing an emergency injunction and resumed work on filing a complaint. However, Staff continued to question the sustainability of the situation for residents who were using this temporary connection. In subsequent conversations with the PWSD, Staff learned that the line was a one-inch diameter line, and was buried to an unknown depth. As such, PWSD Staff felt this was not an ideal long-term solution for the residents and expressed a desire to install lines that could supply water to the entire Misty Mountain neighborhood, but Mr. Blevins currently lacks the funds to initiate a project of that size.

On April 12, 2023, Staff met with Mr. Blevins at his office to discuss the Complaint it filed on April 10, 2023 and the ongoing situation. Mr. Blevins indicated during that meeting, and in subsequent phone conversations on May 15<sup>th</sup> and 16<sup>th</sup>, that he would be interested in pursuing status as a utility and being regulated by the Commission.

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<sup>3</sup> A pitless adapter is attached to a well casing to provide a sanitary and frost-proof seal between the casing and the water line running to a home. This device protects the water from freezing and permits convenient access to the well and well components without having to dig around the well.

Staff hosted a public meeting for Misty Water Works' customers on June 1, 2023, to speak directly to them and gather further information. The meeting, held in Waynesville, Missouri, was well attended with a customer turnout of over 60 residents. While Staff did not become aware of any major updates to the investigation at that time, it was clear that customers were experiencing a high level of discontent. Several customers repeated the problems previously presented in their informal complaints, including random rate increases, being back-billed for hundreds or thousands of dollars that they previously had not known about, poor system maintenance, and outages. Customers discussed situations where Mr. Blevins had shocked wells, which is an effort to disinfect the well via chlorine addition. When properly conducted, the highly chlorinated water is flushed through the distribution system, with customers simultaneously running their taps. Instead, customers reported not receiving any notice of the shock treatment and unexpected slugs of very highly chlorinated water, such that some residents suffered skin irritation, and at least one child reportedly needed medical care.<sup>4</sup> Many customers stated they now purchase bottled water for all consumption purposes because they no longer trust the water quality. Customers also complained of being presented with bills bearing the company name "The Outlaw's Corral," which is present on some of Mr. Blevins' letterhead, but that the Staff cannot verify has been registered as a business entity, according to the Secretary of State. Mr. Blevins also attended the meeting, and presented Staff with a completed CCN application.

Since the public meeting in June, Staff has continued to speak with customers and monitor social media to gather information about Misty Water Works and Mr. Blevins. Staff discovered yet another well that failed coliform tests, this time on the "Charity" distribution system that Mr. Blevins once again "shocked" without giving customers proper notice. Meanwhile, customers on the "Misty Mountain" system have continued to experience sudden and random outages without any communication from the Applicant.

While there are no other entities currently available to provide water service in the proposed service area, the effort needed to bring water from another service provider is not economically feasible. None of the neighborhoods are near a municipality, and while Staff did discuss the situation with the PWSO, the distance to existing water mains and the wide geographic area these small neighborhoods occupy, coupled with the steep topography and thin soils, mean that it would likely require millions of dollars in investment for a relatively small number of customers.

### **Customer Experience Involvement**

Normally, when a regulated company applies for a new CCN, Staff's Customer Experience Department would have conducted a review of an applicant's compliance with the regulations in Chapter 13 of the Commission's rules regarding service and billing practices. In this case, however, the Misty Water Works is not currently subject to Chapter 13, as it is not a regulated

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<sup>4</sup> Anecdote from a customer, Staff did not attempt to verify.

company. Furthermore, because the Applicant has not responded to any data requests as described below, Staff is unable to provide any analysis on current company practices or recommendations for improvement.

### **Data Requests**

On July 6, 2023, Staff issued 44 Data Requests (“DRs”) to Mr. Blevins. Copies of the DRs were mailed and emailed to Mr. Blevins, in addition to filing them in EFIS, in recognition that the Applicant is likely unfamiliar with EFIS. On July 31, 2023, Staff emailed the Applicant requesting a status update on when responses to the DRs could be expected. To date, no response to the DRs have been received, although counsel for Staff received a letter from Mr. Blevins on August 7, 2023, requesting a 90-day “or until November 1” extension to answer the DRs. The Applicant’s refusal and/or incapability to respond to DRs in a timely manner severely impairs Staff’s ability to conduct a thorough analysis or provide recommendations for improvement. However, such refusal to participate in the regulatory process is consistent with the business behavior of this company. To the best of Staff’s knowledge, the Applicant has still not retained an attorney to represent himself or the Misty Water Works before the Commission. Therefore, discovery conferences or motions to compel are not considered likely to be productive.

### **DNR Violations**

Throughout Staff’s investigation of consumer complaints received and Applicant’s business practices, it became aware of DNRs involvement in the various water systems owned and operated by Mr. Blevins. Many of those systems are regulated in some manner by the DNR. Over the course of Staff’s investigations, the following violations were found:

- Failure to seek prior authorization from DNR for construction of wells subject to regulation as a community public water system.<sup>5</sup>
- Failure to obtain permits from DNR for the wells subject to regulation as a community public water system.<sup>6</sup>
- Failure to obtain a certified operator.<sup>7</sup>
- *E. coli* was detected in samples from the Topo well on 8-19-22, 10-19-22, and 11-17-22.<sup>8</sup>
- Total Coliform Bacteria was reportedly detected in samples from the Charity wells on July 17, 2023.

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<sup>5</sup> As these wells were constructed by the previous owner, the initial violations would have been associated with the previous owner. However, Mr. Blevins continues to operate these illegally constructed wells.

<sup>6</sup> DNR letters on July 27, 2022.

<sup>7</sup> DNR Letter of Warning, August 23, 2022. This violation has since been resolved.

<sup>8</sup> DNR Notice of Violation #SL 23003.



### **Application Deficiencies**

The Application is deficient for failing to comply with several provisions of 20 CSR 4240-2.060 and 20 CSR 4240-3.600.

- Based upon customer bills presented to Staff by customers, the Applicant appears to be operating some wells under other businesses with fictitious names. However, the Application does not include registration of any fictitious names with the Secretary of State.
- The Application does not include most of the service area maps.
- The Application does not include most of the legal descriptions of the service areas.
- The Application's feasibility study does not include estimated construction costs for three years, plans for financing, and revenues and expenses for three years.

### **The Tartan Energy Criteria**

Staff utilizes the concepts of Technical, Managerial, and Financial capabilities ("TMF") in studying applications involving existing water and/or sewer systems. It is Staff's position that the Applicant should not be granted a CCN. When considering a request for a new CCN, the Commission applies criteria originally developed in a CCN case filed by the Tartan Energy Company and referred to now as the "Tartan Criteria" or "Tartan Factors." The Tartan Criteria contemplate the following: 1) the need for service; 2) the utility's qualifications; 3) the utility's financial ability; 4) the economic feasibility of the proposal; and, 5) promotion of the public interest. Similar to the TMF capabilities, in previous CCN cases, Staff investigated these criteria, and that investigation relates to this proposed acquisition. Because the Applicant has not answered any DRs, some of the statements below necessarily reflect Staff's observations and assumptions. For example, the Applicant's true financial ability is unknown, and Staff is forced to speculate.

#### **(1) Need for service**

There is both a current and future need for water service. Residential customers desire and need water service, and that water service is already being provided by Misty Water Works to an extent. However, proper operation and upkeep of existing water systems are necessary so customers have safe and adequate service that is in compliance with drinking water control regulations. As noted and detailed above, the Applicant's failure to meet DNR regulations relating to water quality and to maintain adequate facilities such that the residential customers can rely on safe and adequate drinking water prevents Applicant from providing for the current and future need for water service.

#### **(2) Applicant's Qualifications**

It is Staff's position that the Applicant is not qualified to provide the service, and is currently unable or unwilling to provide safe and adequate water service. Staff continues to receive weekly

complaints from the Misty Water Works' customers who are weary of poor service, lack of notifications, varying bills, poor communication, and constant water supply and quality problems. Customer health and safety continue to be a problem, as discussed above, and Staff is concerned with the lack of action from Mr. Blevins to address these problems. The Applicant's failure to register as a business entity with the Secretary of State, and his failure to provide a proper and complete Application, is further evidence the Applicant is unable to properly operate a utility business.

### **(3) Applicant's Financial Ability**

The Applicant has failed to demonstrate its financial ability to successfully maintain operations. In recent months, customer rates have increased, but system maintenance and customer service continues to decline. Misty Water Works lacks a proper billing system and has been unsuccessful at keeping some customers accountable. Based upon documentation viewed by Staff at Mr. Blevins's office, customer accounts are kept on a paper ledger. Customers have reported not receiving bills for months at a time, meeting a representative of Misty Water Works for the first time and being informed they are months in arrears, having to prove that they already paid amounts in dispute, and other billing issues. If Misty Water Works does have the financial capability to provide service, it has not shown it. The dilapidated condition of well houses, the refusal to install and maintain disinfection equipment, and the failure to restore service at some wells is evidence of a lack of financial ability.

### **(4) Feasibility of the Proposal**

It is not clear that Mr. Blevins has an ownership interest in all the wells and easements included in this prospective CCN. Mr. Blevins cannot operate what he does not own. As it is, Staff cannot ascertain the boundaries of Mr. Blevins' requested CCN. Mr. Blevins fails to demonstrate he possesses the financial resources necessary to bring the water systems into a state of compliance and dependable service. Furthermore, there is increasing hostility between Mr. Blevins and the customers, and Staff questions the sustainability of the present arrangement. As discussed above, the customers have shown they are charged between \$35 and \$55 per customer, with little explanation as to the necessity of the different rates among the different customers.<sup>9</sup> Also as discussed above, the Applicant claims to have 98 customers at the time of its application. The Applicant claims in Appendix 5 that it proposes to begin charging \$55 a month to all customers. The Applicant calculates it would collect \$5,390 a month at this rate, plus late fees of \$150, but has expenses of \$7,891 a month. Therefore, the Applicant's own math shows its proposed rates are not feasible for supporting the Applicant.

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<sup>9</sup> These rates have been unexpectedly changed in the past, so Staff cannot certify that Misty Water Works has not again changed rates since the filing of the Application.

### **(5) Promotion of the Public Interest**

Based on the information that Staff has been able to uncover during its months' long investigation and as pointed out above, this application does NOT promote the public interest. The provision of safe and adequate water service to its customers, by any utility, would promote the public interest. However, the Applicant has been unable or unwilling to provide such adequate service, nor has the Applicant been willing to provide evidence that it is willing and able to provide safe and adequate service in the future.

Staff recognizes that water service is necessary for current residential living units to remain occupied. The water systems currently in place and operated by the Applicant are necessary since there are no other water systems presently available within the proposed service area. Unfortunately, based on Staff's investigation and customer comments, it is obvious to Staff that the Applicant's practices have not only been inadequate, but the lack of appropriate operations have led to a serious public health situation for the customer base. It is Staff's position that the current situation is unsustainable, and will continue to get worse without a drastic change in the provision of water service. Based on all information available to Staff at this time, it is Staff's position that it is NOT in the public interest for the Commission to grant a CCN in this situation.

### **Conclusion**

As part of determining public interest, Staff examines whether the customers will receive safe and adequate service under the feasibility proposals outlined by the Applicant. In this situation, because the customers are not presently receiving safe and adequate service, Staff must examine an Applicant's proposal for rectifying the situation. Both the PSC and DNR have received multiple complaints regarding the Applicant's practices. In the Rowden distribution system, the Applicant notified customers that they would be subject to a rate increase due to regulation by DNR, but DNR does not regulate this system, so regardless of what action DNR takes, Mr. Blevins's reasons for a rate increase seem to lack merit. When customers refused to pay the new rate, the Applicant threatened to stop service, but has yet to do so. Staff has spoken with multiple customers of the Charity system and found that many of them are paying different rates for the same level of service, with no apparent variations in their circumstances. Customers also spoke of other instances where the Applicant failed to notify them of potential hazards, such as boil orders, water being subjected to shock chlorination, and frozen distribution lines. Customers have reported at least one of the Applicant's employees being apparently intoxicated when confronting them for bill payment, and taking customer property without permission.

Finally, Mr. Blevins does not appear to have an ownership interest in all the wells and easements that he currently operates. PSC Staff has confirmed with multiple customers that upon purchasing a property, they were under the assumption that they were also purchasing the well on said property, with no paperwork to confirm otherwise. In some instances, they remained under this

assumption for years until the Applicant or one of his associates appeared and requested past due payment for the water that had been used since the customer purchased the property. Customers on the Misty Mountain system continue to suffer random and reoccurring outages without warning or information telling them when they can expect service to return. It is Staff's opinion that the Applicant shows no intention of improving its practices.

### **Recommendation**

Staff recommends the Application for CCN be denied. Due to the unsustainable nature of the situation, Staff also recommends that the Commission appoint an interim receiver to operate the system until a utility with the financial and technical ability to operate the system can be found. Concurrently with the filing of this recommendation to deny the Application for CCN, Staff is filing a Petition for the appointment of an interim receiver to begin that process.



**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

In the Matter of Leon Travis Blevins )  
d/b/a Misty Water Works for a )  
Certificate of Convenience and Necessity ) Case No. WA-2023-0418  
Authorizing it to Own, Operate, )  
Maintain, Control and Manage Water )  
Systems in Pulaski County, Missouri )

**AFFIDAVIT OF ADAM STAMP**

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF COLE )

**COMES NOW ADAM STAMP**, and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation, in Memorandum form*; and that the same is true and correct according to his best knowledge and belief.

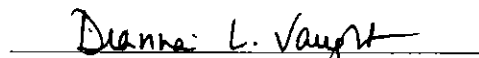
Further the Affiant sayeth not.

  
ADAM STAMP

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 15<sup>th</sup> day of August, 2023.

DIANNA L. VAUGHT  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Cole County  
My Commission Expires: July 18, 2027  
Commission Number: 15207377

  
Notary Public

