

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

In the Matter of Carl R. Mills Trust for a)
Certificate of Convenience and Necessity)
Authorizing it to Install, Own, Acquire,)
Construct, Operate, Control, Manage and)
Maintain Water Systems in Carriage Oaks)
Estates)

File No. WA-2018-0370

RESPONSE TO ORDER DIRECTING RESPONSES

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and in this matter hereby submits its *Response to Order Directing Responses*:

1. On May 31, 2019, Carl Mills personally sent a letter to the Commission, despite the fact that Mr. Mills is, or was at one point in time represented by counsel in this matter,¹ requesting that the currently-scheduled hearing for this matter be postponed. Mr. Mills stated in his letter that he contacted his state representative asking for regulatory relief, believing the matter to be out of the jurisdiction of the Commission.

2. Also on May 31, 2019, the Commission issued its *Order Directing Responses*, in which the Commission treated the letter as a motion for continuance, and ordered Staff and the Intervenor to file a response to Mr. Mills' request for a continuance of the evidentiary hearing.

3. Staff would note that the question of whether the Commission has jurisdiction over Mr. Mills was definitively answered by it in Case No. WC-2017-0037,

¹ See 4 CSR 240-2.080(1) ("Every pleading or brief shall be signed by an attorney of record with the attorney's individual name, or if a natural person is not represented by an attorney, shall be signed by the natural person.").

where the Commission found that “Carl Mills is a person who owns a utility devoted to the public use, and operated for gain”, and thus, “is a water corporation as defined by Section 386.020(59) RSMo. and is subject to the Commission’s jurisdiction.”^{2,3}

4. Even setting aside for the moment that Mr. Mills’ request is a challenge to a final Commission Order, providing opportunity for an Applicant to prospectively seek relief from the state legislature as a means to avoid current regulation is not sufficient reason to continue a proceeding before the Commission, especially on an Application submitted by Mr. Mills nearly a year ago on June 7, 2018.⁴

5. While Staff is not opposed to the continuance of a hearing for good cause shown, based upon information included in Mr. Mills’ letter, Staff sees no good cause in this instance. Therefore, Staff recommends the Commission reject Mr. Mills’ “Motion for Continuance.”

² See WC-2017-0037, EFIS Item 91, *Report and Order* at page 11, paragraph H; see also page 15 (“After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Carl Mills is a water corporation within the definition of 386.020(59) RSMo, and as such is subject to the Commission’s jurisdiction.”). The Order in WC-2017-0037 was issued on April 12, 2018 and its Effective Date was May 14, 2018. The Commission’s EFIS records show that Mr. Mills did not challenge the Order “by filing a motion for rehearing before the Commission under Section 386.500, [or] by requesting a writ of review from the circuit court pursuant to Section 386.510.” *Staff of Missouri Pub. Serv. Comm’n v. Suburban Water and Sewer Co. and Gordon Burnam*, No. WC-2007-0452, 2007 WL 2285427 at *3 (July 19, 2007). “Because there has been no proper challenge to the Commission’s Order in Case No. [WC-2017-0037], it is final and conclusive and under Section 386.550, [Mr. Mills] is precluded from collaterally attacking it [] in this proceeding.” *Id.* “Section 386.550, which has long been held by Missouri appellate courts to be ‘declaratory of the law’s solicitude for the repose of final judgments,’ states: ‘In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.’” *Id.* “Accordingly, the courts have held that ‘final Commission orders are conclusive in all collateral actions or proceedings.’” *Id.*

³ This fact was noted in the Parties’ Joint Stipulation of Agreed Upon Facts filed on April 16, 2019. See EFIS Item 31, Paragraph 11 (“In WC-2017-0037, the Commission concluded that ‘Carl Mills is a water corporation within the definition of 386.020(59) RSMo, and as such is subject to Commission jurisdiction.’”).

⁴ See WA-2018-0370, EFIS Item Number 1, Application for Convenience and Necessity.

WHEREFORE, Staff submits its *Response to Order Directing Responses* for the Commission's information and consideration and Staff respectfully requests the Commission reject Mr. Mills' Motion for Continuance; and grant such further relief as the Commission considers just in the circumstances.

Respectfully submitted,

/s/ Mark Johnson

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all parties and/or counsel of record on this 5th day of June, 2019.

/s/ Alexandra L. Klaus