

**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

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File No. WA-2018-0370

**INTERVENORS' POST-HEARING
REPLY BRIEF**

COME NOW Intervenors Derald Morgan, Rick and Cindy Graver, William and Gloria Phipps, and David Lott ("Intervenors") by and through counsel, and hereby submit the following Post-Hearing Reply Brief:

Staff's Initial Brief

Although Applicant Carl R. Mills ("Mills") filed an initial post-hearing brief in this case, it simply adopts the arguments of Staff's Initial Brief, who is now advocating for Applicant. As such, Intervenors will only address the arguments set forth in the Staff's Initial Brief in this section.

For the most part, Staff's Initial Brief simply restates what was contained in the Staff Recommendation filed in this case on October 11, 2018. Staff sets forth a recitation of the applicable law and specifically, the "Tartan Criteria" found in *In Re Tartan Energy Co., L.C.*, No. GA-94-127, 1994 WL 762882 (Sept. 16, 1994). While the Intervenors do not disagree with Staff as to the applicable law, they do take issue with Staff's application of the facts to that law and its ultimate conclusion that Mills is qualified to provide water service.

In its Initial Brief, Staff completely ignores the testimony, evidence and argument of Intervenors made in this case. Instead, Staff makes the conclusory statement that Mills is qualified to operate the water system because he has been doing so since 1999. Not only is this fact irrelevant to the case and the Tartan Criteria, it fails to address any of the evidence presented at the hearing in this case.

For example, Intervenors proved at the evidentiary hearing that Mills has been billing the Intervenors for materials (chlorine) that he admits were never used or even ordered. At best, this demonstrates how ignorant and unaware Mills is regarding the operating costs of the water system. At worst, it shows that Mills has engaged in theft.

In addition to this, Intervenors proved that Mills continues to issue bills for the water system through the Carriage Oaks Estates Home Owners' Association despite the Commission's previous orders. This shows that Mills either doesn't understand his responsibilities in this case or he doesn't care what the Commission orders, he will continue to do what he wants. Based on the Intervenors' experience, it is their belief that it is the later.

These are only two examples of how the evidence demonstrated that Mr. Mills is not qualified to operate the water system. Intervenors initial post-trial brief covers this evidence in more detail. Despite these facts, clearly proven at the evidentiary hearing in this case, Staff believes that Mills is qualified to operate the water system. Staff can only make this recommendation because Staff has ignored the evidence and testimony presented by Intervenors in this case.

Office of Public Counsel's Initial Brief

Although not explicitly stated in the Office of Public Counsel's brief, it is apparent that Public Counsel is uncomfortable with the Commission granting the Applicant a CCN in this case. Public Counsel feels there is little choice, however, because there are no real alternatives. However, in a footnote in its brief, Public Counsel admits that such an alternative exists, albeit an involved alternative.

Public Counsel makes reference to the Section 393.145 RSMo. which sets forth a process by which the Commission can place the Carriage Oaks Estates water system into receivership. While Intervenors are open to such a recommendation, Intervenors did advocate for a different alternative in their opening statement and in their initial brief. As previously stated, Section 393.146 RSMo., permits the Commission to order a "capable public utility" to acquire the Carriage Oaks Estates water system. It is this alternative that the Intervenors proposed at the evidentiary hearing and in their initial brief.

WHEREFORE, Intervenors Derald Morgan, Rick and Cindy Graver, William and Gloria Phipps, and David Lott request that the Public Service Commission deny Mills' Amended Application to for Convenience and Necessity and for such other relief as the Commission deems necessary.

Respectfully Submitted,

SCHENEWERK & FINKENBINDER,
ATTORNEYS AT LAW, LLC

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CERTIFICATE OF SERVICE

The below signed counsel hereby certifies that a true and accurate copy of the foregoing was sent to all parties of record on August 6, 2019.

/s/ Karl Finkenbinder
Karl Finkenbinder