

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

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	)	
In the Matter of Carl R. Mills Trust for a	)	
Certificate of Convenience and Necessity	)	File No. WA-2018-0370
Authorizing it to Install, Own, Acquire,	)	
Construct, Operate, Control, Manage and	)	
Maintain Water Systems in Carriage Oaks	)	
Estates	)	
	)	
	)	
	)	

**INTERVENORS' POST-HEARING 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 Brief:

**Introduction**

This case comes before the Public Service Commission (“PSC”) on Applicant Carl R. Mills (“Mills”) Amended Application for Certificate of Convenience and Necessity to operate a water utility within Carriage Oaks Estates located in Stone County, Missouri. In case WC-2017-0037, the PSC previously ruled that Mr. Mills and his operation of the water utility for Carriage Oaks Estates was subject to the jurisdiction of the PSC. Prior to the hearing, all parties submitted a “Joint List of Issues” to be decided by the Commission as it specifically relates to Mill’s Amended Application. There are only two issues to be decided by the Commission in this case: (1) Did the evidence establish that the water system in Carriage Oaks Estates for which Carl R. Mills is seeking a certificate of convenience and necessity (“CCN”) is “necessary or convenient for the public service” within the meaning of that phrase in Section 393.170 RSMo;

and (2) if the Commission grants Mr. Mills a CCN, what conditions, if any, should the Commission deem to be reasonable and necessary, and impose.

### Issues

- 1. The evidence established that the water system in Carriage Oaks Estates for which Carl R. Mills’ (“Mills”) is seeking a certificate of convenience and necessity (“CCN”) is not “necessary or convenient for the public service” within the meaning of that phrase in section 393.170, RSMo. because Mr. Mills is not qualified to operate a water service and his operation of the water service does not promote the public interest.**

The Public Service Commission should deny Mills’ Amended Application for a Certificate of Convenience and Necessity because Mr. Mills is not qualified to provide or operate a water service and his operation of the water service does not promote the public interest. While Rule 4 CSR 240-2.060 covers the technical requirements for granting certificates of convenience and necessity, the Public Commission has articulated substantive requirements it considers when reviewing applications. These requirements include: (1) a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant’s proposal must be economically feasible; and (5) the service must promote the public interest. *In re: Tartan Energy Co., L.C.*, Case No. GA-94-127 (Mo. P.S.C. 1994).

#### **Not Qualified to Operate a Water System**

Mills is not qualified to provide water services and Mills’ control of the water system does not promote the public interest.

In considering whether an entity or individual is qualified to provide a utility service, the Commission considers the background, experience, and access to resources. *In re Tartan Energy Co., L.C.*, Case No. GA-94-127 (Mo. P.S.C. 1994). In our case, Mr. Mills was proven to be unqualified to provide water services for several reasons.

Lack of experience and Incompetence

Mr. Mills is incompetent and lacks the experience required to operate the water system. Mr. Mills testified that prior to operating the water system for Carriage Oaks Estates, he has no prior experience in operating a water service. (Tr. 93: 16-25; 94: 1-12). Mr. Mills also admitted to failing a water test a mere two weeks before the hearing and that the water in the system had tested positive for E Coli. (Tr. 100: 10-16). For the entire time that Mr. Mills has operated the water system, he only tested the water quality two times, other than the failed test. (Tr. 102: 11-25; 103: 1-12; 165: 9-25; 166: 1-3). That means that Mr. Mills has failed one-third or 33% of all the water tests he has conducted.

Mr. Mills is incompetent because he has refused to address quality and service issues as it relates to the water system. Intervenor, John D. Morgan, testified that multiple homeowners have raised issues with regard to service and water quality to Mr. Mills but that those issues have been completely ignored by Mr. Mills. (Exhibit 300; Tr. 170: 18-25; 171: 1-25). Even worse, Mr. Mills denied ever receiving any complaints from any of the utility users. (Tr. 24: 15-21; 60: 13-25).

Mr. Mills is also incompetent because he doesn't use chlorine to disinfect the water system, yet, he charges the Intervenors for the supposed use of chlorine. (Exhibit 303; Tr. 103: 22-25; 104: 1-25; 105: 1-25). This shows that Mr. Mills is both incompetent in his ability to

properly ensure water quality and dishonest for charging the Intervenors for something that is never used.

Finally, Mr. Mills is incompetent because he does not understand this process, what a CCN is or what the PSC does. Mr. Mills admitted in his own testimony that he is unsure what a CCN is, what this process is for, or what the PSC does. (Tr. 110: 5-19). A person who is this unfamiliar with the PSC and the regulation of water utilities is clearly not capable of owning and managing one.

### Background

Mr. Mills current background establishes that he is unqualified to operate the water system. The evidence showed that Mr. Mills has previously thwarted the authority of the PSC on at least two occasions and as such, is likely to do so again. In the first case, Mr. Mills refused to transfer ownership of the Carriage Oak Estates water system back into his individual name in compliance with the Commission's order in Case No. WC-2017-0037. (Page 5 of Mr. Mills Pre-Filed Rebuttal Testimony). In the second case, Mr. Mills continues to have the Carriage Oaks Home Owners' Association send the Intervenors actual bills for the cost of water services in violation of the Commission's order in Case No. WC-2017-0037. (Exhibit 307; 123: 2-25; 124: 1-7). To make matters worse, Mr. Mills continues to challenge the jurisdiction of the PSC in this matter despite the PSC's previous ruling. (Exhibit 305). If Mr. Mills refuses to recognize the PSC's jurisdiction and flaunts the orders of the PSC, he certainly is not qualified to operate the water system.

As the evidence has clearly shown, Mr. Mills is not qualified, in any respect, to operate the water system for Carriage Oaks Estates.

### **The Service Does Not Promote the Public Interest**

Mr. Mills control of the water system does not promote the public interest for several reasons. First, Mr. Mills is an erratic and ill-tempered man. His behavior is unpredictable and petty. In our case, the evidence showed that Mr. Mills has threatened to terminate water service to the Intervenors for various improper reasons. One reason that Mr. Mills has threatened to cut off water service is for the alleged Intervenors failure to pay their annual assessment to the Carriage Oaks Owners' Association. (Exhibit 314C; Tr. 125, 126, 127, 128). While the Intervenors deny the allegation by Mr. Mills, even if true, the threat is improper. Mr. Mills is unlawfully using the threat of shutting off water service in order to coerce payment for an unrelated matter, HOA dues. The second reason that Mr. Mills has threatened to cut off water service is because he believes that one of the Intervenor's water lines and meter loop were improperly installed. (Exhibit 316; Tr. 129, 130, 131). Again, this is improper and illegal.

In addition to the foregoing, Mr. Mills fires all the professionals that he hires when he believes that his judgment is better than the professional's judgment. In our case, he fired his attorney a mere three weeks before this hearing and fired Ozark Clean Water, who handled the day to day management of the water system, around the same time. (Tr. 97: 25; 98: 1-25; 99: 1-24; 107: 8-25; 107: 1-6). This behavior shows that Mr. Mills will simply substitute his own poor judgment over those professionals who provide advice in their field of expertise.

Mr. Mills control of the water system does not promote the public interest because Mr. Mills is in poor physical and mental health. By Mr. Mills own admission, he recently had two major vascular surgeries on both of his legs. (Exhibit 309C; 46: 21-25; 47: 1-4). Despite this, Mr. Mills continues to handle all the day-to-day operations of the water system. Mr. Mills mental health is also subject to question. By his own admission, Mr. Mills suffers from memory loss and takes medication for his memory loss. (Tr. 133: 1-25). Mr. Mills has no succession plan

for the ownership or control of the water system in the event of his incapacity or death. Mr. Mills is an elderly man with both severe physical and mental limitations. It would not promote the public interest if the PSC were to place ownership and control of a person who is in such a compromised position.

Mr. Mills should not be operating the water system. Mr. Mills is not qualified to operate the water system and it would not promote the public interest for him to do so. For the reasons set forth above, the Commission should deny Mr. Mills' Amended Application for a Certificate of Convenience and Necessity and should proceed with ordering a public utility to acquire the water system under Section 393.146 RSMo.

**2. If the Commission grants Mr. Mills a CCN, the Commission should impose several conditions which are reasonable and necessary under the circumstances.**

While intervenors adamantly oppose the grant of a Certificate of Convenience and Necessity to Mr. Mills, if one is granted, the Commission should impose certain requirements to ensure the safety of the drinking water. First, the Commission should require Mr. Mills to submit a succession plan for the care and maintenance of the water system. Mr. Mills is an elderly individual who has significant health and mental issues. There needs to be a successor in place in case Mr. Mills becomes unable to operate the water system.

Additionally, Mr. Mills should be required to perform the following in order to maintain the system: (1) install a chlorine monitor on the tank for proper chlorine level readings; (2) install a water filter on the front end of the water system to prevent rocks and debris from entering the water lines; (3) conduct chlorine tests once every two weeks by a third-party operator; (4) conduct filter checks and cleaning every two weeks by a third-party operator; (5) flush the water tank twice per year by a third-party operator; (6) flush the water lines four times per year by a

third-party operator; (7) have a third-party operator take and test water samples at the farthest point in the water system every two weeks to ensure safe drinking water; and (8) have a third-party operator monitor the use of the tank to ensure that water storage does not exceed the length of time that chlorine will be active in the water supply. These measures are necessary to ensure the safety of the drinking water.

Finally, the Commission should remove the proposed “Depreciation Expense” of \$646.84 from the Staff’s Recommendation for the initial flat billing rate. Because the Applicant has already been reimbursed for the expense of the water system’s infrastructure, it is fundamentally unfair for the Intervenors to have to pay for the infrastructure a second time through a “Depreciation Expense”.

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,

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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 15<sup>th</sup> day of July, 2019.

/s/ Karl Finkenbinder  
Karl Finkenbinder