

**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)	File No. WA-2018-0370
Authorizing it to Install, Own, Acquire,)	
Construct, Operate, Control, Manage and)	
Maintain Water Systems in Carriage Oaks)	
Estates)	
)	
)	
)	

INTERVENORS' POSITION STATEMENT

COME NOW Intervenor Derald Morgan, Rick and Cindy Graver, William and Gloria Phipps, and David Lott (“Intervenors”) by and through counsel, Schenewerk & Finkenbinder, Attorneys at Law, LLC, and pursuant to the *Amended Order Setting Procedural Schedule*, providing the following Position Statement:

POSITION STATEMENT

- 1. Carl Richard Mills’ (“Mills”) Application for Convenience and Necessity to operate a water utility should be denied because Mills has failed to demonstrate that the water system is “necessary or convenient for the public service” within the meaning of that phrase in section 393.170, RSMo. because Mr. Mills he not qualified to operate a utility service.**

The Public Service Commission should deny Mills’ Amended Application for a Certificate of Convenience and Necessity because Mr. Mills is not qualified to provide utility services. 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. For example, in *In re Tartan Energy Co.*, the Commission considered the qualifications of the officers of Tartan Energy as well as Tartan Energy's access to resources. Case No. GA-94-127 (Mo. P.S.C. 1994). Tartan Energy was owned by Torch Energy Advisors, Inc. and three individuals—Mr. Taylor, Mr. Trusty, and Mr. Boyles. These individuals had an extensive background in the energy industry.

Mr. Taylor was an engineer with a degree in industrial engineering who received continuing professional education over the years in all aspects of the natural gas and petroleum business. He worked for Sun Line Pipe Line in various positions for 17 years and was responsible for starting a subsidiary, Omega Pipeline Company. Mr. Taylor served as president of Omega and Missouri Pipeline and was the current president of Tartan.

Mr. Trusty had similar experience. He had a bachelor's and master's degree in mechanical engineering. Additionally, Mr. Trusty was a Registered Professional Engineer in Oklahoma. He had been employed by Sun Line Pipe for seven years and held various duties. His final position was manager of corporate planning. After that, he joined Omega and served as

Vice President of Engineering and Operations. He then became vice president of engineering and operations for Tartan Energy.

Tartan Energy also had access to an energy consultant, Mr. Keith. Mr. Keith held several positions relating to utilities and utility regulation, including a position with the staff of the Kansas Corporations Commission. Unlike Mr. Mills, each of these individuals were well known to the Missouri Public Service Commission and had a wealth of industry experience. Moreover, there was no concern over what would happen to the service if one of these individuals were to leave Tartan Energy. As the Commission observed:

“Tartan’s qualifications do not rest solely on the shoulders of these gentlemen...Tartan is also owned by Torch Energy Advisors Inc. which is involved in the acquisition and management of oil and gas properties, including oil and gas production and development...Torch also recently purchased Panda Resources, which is a gas marketing company. Although Tartan is undecided about whether it intends to use Panda, it at least has knowledge of the existence of gas marketing companies and would likely have access to Panda if needed.”

Because the owners and managers of Tartan were experienced, the “Commission [was] confident that Tartan possesses the necessary knowledge of the natural gas utility industry, including the industry as it has developed in the State of Missouri, as well as of all the requisite technical requirements regarding engineering, safety, and so forth.”

The Commission cannot say the same for Mr. Mills. Unlike Tartan Energy, the quality of water services rests solely on one individual, Mr. Mills. Mr. Mills is not well-versed in the intricacies of utility regulations. He has no extensive experience in water systems. His experience is a developer; not a utility provider. Moreover, he does not have the requisite knowledge of the technical requirements regarding the engineering and water safety. He is not a

water company with an organizational system and methods of oversight; he is an elderly man with a vendetta against his neighbors.

Does Not Promote the Public Interest

Even if Mr. Mills had the requisite knowledge and experience to operate a water system, he has demonstrated that he does not have the temperament or good judgment to operate one. His control of the water system does not promote the public interest. If anything, it threatens it. In fact, Mr. Mills has threatened to terminate water services to paying customers who disagree with him. Mr. Mills—one man—will determine which neighbors get access to a vital resource, water. This is too much power to place in the hands of one man without a mechanism of oversight.

Mills' operation of the water system in the past is further evidence that Mills is unqualified to operate a water system. The water services provided by Mills has been inadequate and potentially unsafe. There is often a pressure and/or flow problem in the subdivision because the tank is excessively large and not properly utilized to provide proper pressure and flow. There have also been problems caused by the change of the pipe sizes. For some time, the chlorine system was not in use and it is not known if it is properly used and maintained in keeping a proper level of chlorine in the drinking water when the tank is in use. No testing is provided to intervenors regarding the quality and safety of their water. Since the upgrade of the system, the size of rocks found in the home filters has increased and is a major concern as it can cause a major blockage in a home water system. The amount of iron has been a problem and could be alleviated by a regular flushing out of the system. Mills' inability to safely manage and operate the water system demonstrates such a task should not be left to him.

Mr. Mills should not be operating the water system. Such a task is too important to leave in the hands of one man. Because Mr. Mills is unqualified in experience and temperament, the

Commission should deny his Amended Application for a Certificate of Convenience and Necessity.

2. If the Commission does grant the CCN, the Commission should establish a succession plan.

While Intervenors adamantly oppose the grant of a Certificate of Convenience and Necessity to 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 was recently hospitalized. There needs to be a plan 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 the 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; and (7) 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.

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 set this matter for an evidentiary hearing.

Respectfully Submitted,
SCHENEWERK & FINKENBINDER,
ATTORNEYS AT LAW, LLC

By: /s/ Karl Finkenbinder

Karl A. Finkenbinder, MOBAR #59425
100 Prairie Dunes Drive, Ste. 200
Branson MO 65616
Phone (417)334-7922
(417)336-7923 [Fax]
email: Karl@sfalawfirm.com

Attorneys for the Intervenors

CERTIFICATE OF SERVICE

The below signed counsel hereby certifies that a true and accurate copy of the foregoing was sent to all counsel of record via email on April 23, 2019, to the following email addresses: Bryan Wade [bryan.wade@huschblackwell.com]; Whitney Smith [whitney.smith@huschblackwell.com]; Mark.Johnson@psc.mo.gov [Mark.Johnson@psc.mo.gov]; Lexi Klaus [Lexi.Klaus@psc.mo.gov]; Dianna Vaught [Dianna.Vaught@psc.mo.gov].

/s/ Karl Finkenbinder
Karl Finkenbinder