

## MEMORANDUM

**TO:** Missouri Public Service Commission  
Official Case File, Case No. WA-2018-0370

**FROM:** James A. Merciel, Jr - Water and Sewer Department  
Ashley Sarver - Auditing Department  
Deborah Bernsen - Customer Experience Department  
Ben Rankin - Customer Experience Department

/s/ James A. Merciel, Jr. 10-11-18      /s/ Alexandra Klaus 10-11-18  
Case Coordinator / Date                      Staff Counsel's Office / Date

**SUBJECT:** Recommendation of Approval on Amended Application

**DATE:** October 11, 2018

### CASE BACKGROUND

On June 7, 2018, the Carl R. Mills Trust (Mills Trust) filed its *Application for Convenience and Necessity* (Application) with the Missouri Public Service Commission (Commission). Mills Trust seeks a Certificate of Convenience and Necessity (CCN) to provide water service to a subdivision development named Carriage Oaks Estates, near Reed Spring in Stone County, Missouri.

On October 2, 2018, Mr. Carl R. Mills (Mr. Mills or Applicant) submitted in this case an *Amended Application for Convenience and Necessity* (Amended Application). The Amended Application stated that the Mills Trust is Mr. Mills' personal trust, that the Application "wrongfully" listed Mills Trust as the "original owner" of the water system, and the Amended Application now requests that the Commission grant a CCN to Mr. Mills to provide water service.

The Application and Amended Application were filed to comply with the Commission's *Report and Order* in Case No. WC-2017-0037 (ref. EFIS Item No. 91), effective on May 14, 2018, which ordered Mr. Mills to seek a CCN.

On June 29, 2018, several homeowners who are customers of the involved water system<sup>1</sup> submitted an *Application to Intervene*. The Commission granted intervention on July 10, 2018.

### BACKGROUND OF THE WATER SYSTEM

Some background information of this utility operation was submitted by Staff in its *Staff Report and Motion for Mediation* filed in WC-2017-0037 on October 28, 2016 (ref. EFIS No. 15). According to information provided to Staff by Respondents in that case, and observed by Staff in the field, the developed area of Carriage Oaks Estates consists of Phase I with eight (8) lots and

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<sup>1</sup> This current CCN case, as directed by the Commission's Report and Order in WC-2017-0037, pertains only to the water system. Operation of a sewer system in Carriage Oaks was also the subject of WC-2017-0037, but due to its small size was found by the Commission to not be subject to jurisdiction.

Phase II with twenty-four (24) lots, for a total of thirty-two (32) lots. Of these 32 existing lots in the developed area of the subdivision, at present there are seven (7) lots upon which homes have been constructed and which are receiving water and sewer service. Staff observed that water (and sewer) service connection components are visible upon some of the remaining lots, and available for water/sewer connections of future new homes on those lots.

There are also approximately twenty-three (23) acres of additional unplatted land available that could be developed in the future. A proposed Phase III would be included within this undeveloped area and could add approximately twenty-three (23) additional lots.

The water system consists of a single well with current production capacity of fifty-five (55) gallons per minute (gpm), a ground storage tank of an approximate volume of 35,000 gallons, high service pumps to provide distribution system water pressure and bladder type pressure tanks to normalize distribution system pressure. The distribution system is in place for all of the existing 32 lots in the developed area. The system includes meters for six of the seven customers, although at present they are neither being read nor used for billing. Expenses associated with operation of the water system are handled through a homeowners association,<sup>2</sup> another trust Mr. Mills has created, or other entities owned or controlled by Mr. Mills.

#### **Utility Property Ownership – Compiled upon advice of Staff Counsel.**

As a result of the Commission's decision in WC-2017-0037, and the operation of § 393.190 RSMo, Staff asserts that the amended applicant of the amended application, Mr. Mills, is the proper applicant for the utility currently used to provide service, and is correctly seeking a CCN from the Commission. However, to Staff's knowledge at this time, actual legal title to the utility property is still held by Carriage Oaks Not-for-Profit Water and Sewer Corporation. Mr. Mills will need to obtain legal title to the utility property from Carriage Oaks Not-for-Profit Water and Sewer Corporation, to ensure that he has complete and independent access and control over the entire water system. Therefore, Staff recommends that Mr. Mills re-obtain legal title to the utility property within thirty (30) days after the effective date of an order from the Commission granting a CCN to Mr. Mills, and file a statement of accomplishing such in this case file.

#### **STAFF'S INVESTIGATION**

##### **Service Area**

In the Application and Amended Application, the Applicant included a map of the subdivision, and a series of metes and bounds property descriptions, intended to represent the requested service area. However, Staff does not agree that the submitted information is accurate for the purpose of depicting the service area. During Staff's field visit on August 14, 2018, to observe the water system and service area, Mr. Mills provided a better map that adequately illustrates the requested service area. Staff proposes an alternative map as well as new metes and bounds

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<sup>2</sup> For detail regarding control of utility expenses, ref. the *Staff Report and Motion for Mediation* filed in WC-2017-0037, EFIS No. 15.

description based on the most recently provided information. Staff's proposed water service area map is shown as Attachment A, and the metes and bounds written description is shown as Attachment B, each included with this Memorandum.

### **Plant-In-Service Balances**

Mr. Mills sent Staff invoices for the cost of the storage tank and high-service pumping system constructed in 2015. Records for the cost of plant-in-service constructed during the beginning of the subdivision development, almost 20 years ago, were not provided to Staff. Using this information, some of the information stated in the Application and Amended Application, and its own judgement, Staff created an estimate of water utility plant-in-service, along with an estimated depreciation reserve. Further, this water system was apparently constructed with the intention of providing service to a total of approximately 55 customers in all three development phases as described above. However, since there are only seven customers at present, Staff proposes applying a capacity adjustment as the small fraction of the total customer potential should not be required to pay for the entire capital cost of the water system. Staff's estimated rate base and the capacity adjustment are shown on Attachment C, included with this Memorandum.

### **Rate and Tariff Matters**

Staff obtained information for some operating expenses from Mr. Mills, and also calculated or estimated certain operating expenses on a pro-forma basis, to reflect expenses Applicant is likely to incur as a regulated water utility. Staff's summary of expected operating expenses is shown on Attachment D, included with this Memorandum. Based on these expenses, Staff proposes a flat quarterly rate for water service of \$344.17,<sup>3</sup> also shown on Attachment D. Staff acknowledges that this is a high rate for water service. This is primarily due to the fact that there are only (7) seven customers on the system to share the fixed costs of operating the water system. The fixed costs include the electric utility's customer charge portion of the electric bill, the cost of day-to-day routine tasks and undertaking system repairs, all of which are unrelated to both water usage and the number of customer connections.

Staff suggests that Mr. Mills start reading customer meters at least quarterly, read the master meter located in the well house at least weekly, and record all meter readings. There are two reasons for this suggestion: one is to collect water usage information for possible consideration of metered rates in the future, if Mr. Mills intends to propose metered rates; and the other is to be able to analyze distribution system water loss.

Assuming the Commission grants a CCN in this case, the Applicant will need to keep water utility financial records in accordance with the National Association of Regulatory Utility

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<sup>3</sup> Although Applicant proposed a metered rate in its Application and Amended Application, Staff does not have sufficient water usage information to recommend metered water rates at this time. Also, if a metered rate were in place then aging meters may need to be tested or replaced in accordance with Commission rule 4 CSR 240-10.030 (38).

Commissioners (NARUC) Uniform System of Accounts. Staff will offer assistance in setting up records, if such assistance is desired by Mr. Mills.

Applicant will additionally need to submit a water tariff that includes service area depiction, rates, and rules pertaining to water service. Staff will work with Mr. Mills to create the document.

The above mentioned Report and Order in Case No. WC-2017-0037 also required that, “upon obtaining a Certificate of Convenience and Necessity, Carl Mills shall initiate a rate case with the Missouri Public Service Commission.” Staff, having reviewed available financial information, suggests that a rate case filed by Mr. Mills immediately after the granting of a CCN in this current case would be unproductive. The reason is that expense records that exist were reviewed by Staff, with known and estimated expenses included in the recommended rates for this case. Staff recommends that, alternatively, the Commission allow postponement of the requirement to file a rate case for one (1) year after the effective date of a CCN granted to Mr. Mills. This would allow Mr. Mills, as a regulated utility, to properly record all utility-related expenses incurred, including that for billing, along with water usage information. Further, Staff recommends that as a regulated water utility, Mr. Mills make available for audit and review all available invoices, originals or copies, for expenses pertaining to the capital costs of constructing and installing the water utility assets. Staff anticipates that these invoices could belong to Mr. Mills’ other entities including, but not limited to, Carriage Oaks Estates Homeowners Association, Distinctive Designs, Ltd., and Caring Americans Trust Foundation, Inc.

#### **Technical, Managerial, and Financial Capacity, and Tartan Energy Criteria**

Staff utilizes the concepts of technical, managerial, and financial capacities (TMF) in studying situations involving newly certificated water and/or sewer operations. Mr. Mills will rely on technical consultants for design, construction and major repairs. Mr. Mills oversees or undertakes operations of the water system. Financial resources largely are from Mr. Mills as the developer of the subdivision. Staff observes that the water system appears to be adequately designed and constructed, is in good condition, and customers are not complaining about service issues.

When considering a request for a new CCN, the Commission applies criteria originally developed in Case No. GA-94-127, a CCN case filed by the Tartan Energy Company and referred to now as the “Tartan criteria.” The Tartan criteria contemplate 1) need for service; 2) the utility’s qualifications; 3) the utility’s financial ability; 4) the feasibility of the proposal; and, 5) promotion of the public interest. For its reviews, Staff also analyzes whether or not other utility entities are available to provide similar service. In this situation, no other utilities are readily available to provide water and sewer services.

**(1) Need for Service**

There is a need for service. Existing residential customers have, and possible future residential customers will have, a desire and need for water service. Mr. Mills, through one or more affiliated entities, presently operates an existing water system that is utilized to provide such service, and no other water systems are readily available.

**(2) Applicant's Qualifications**

Mr. Mills has provided safe and adequate water service for this service area in past years. Staff concludes Mr. Mills is sufficiently qualified through experience to provide the service.

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

Staff's observation of current operations indicates that upgrades and repairs that have required financial resources appear to have been adequate in the past. Mr. Mills has primarily used personal financial resources to address upgrades and repairs.

**(4) Economic Feasibility of Proposal**

Mr. Mills' proposal to own and operate the water system serving Carriage Oaks subdivision is economically feasible, based on an observation that operations presently appear to support current expenses. However, if expenses associated with rate base are actually included in rates, then a rate base capacity adjustment similar to Staff's proposal would likely be necessary for feasibility purposes.

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

As the Commission determined in Case No. GA-94-127, positive findings with respect to the other four standards above will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest. For the reasons outlined throughout this Memorandum, and considering this operation exists with customers receiving water service at present, with no known service complaints, Staff asserts that Mr. Mills' request for a CCN serves the public interest. Staff concludes that the points regarding TMF capacities and the Tartan Energy criteria are all met for this case.

**Depreciation**

For existing and future plant-in-service, Mr. Mills will need depreciation rates prescribed by the Commission for water utility plant accounts. Staff recommends the Commission approve water depreciation rates similar to those prescribed for most small regulated water systems, as shown on Attachment E, included with this Memorandum.

**Publicity and Customer Notice**

Staff notes that this matter is before the Commission as a result of customers of this water system who filed Case No. WC-2017-0037. The same customers were granted intervention by the Commission in this pending case. Mr. Mills additionally stated to Staff in a data request

response that due to the small size of Carriage Oaks Estates, residents were individually notified of the case pending before the Commission. Therefore, Staff asserts that there is no need for any special customer notice or a local public hearing regarding this proposal. Mr. Mills will need to communicate with customers after the granting of a CCN, as is normal procedure for all regulated water utilities.

### **Customer Experience Department**

The Customer Experience Department (CXD) submitted a number of data requests to determine the present operating practices of the water system and entities related to providing customer service. The transition to becoming a regulated utility will necessitate a number of changes from the water system's current customer service practices, including billing and payment processing. Mr. Mills will be required to comply with the provisions of 4 CSR 240-13 (Chapter 13) which governs billing, meter reading, payment, discontinuance of service, and other customer service processes.

At the present time, all customer service functions, including billing for water service, are performed within the activities connected to the Carriage Oaks Estates Homeowners Association (HOA). Currently, the HOA issues an annual assessment that covers, among other things, the water service. Historically the assessment was delivered to the residents by Mr. Mills. The most recent HOA assessment for 2017 was \$2,100.00 per lot; however, the bills are not itemized and it is not possible to determine what portion of the assessment is for the operation of the water system. As a regulated utility, Mr. Mills will be required to produce monthly or quarterly bills for his water customers that specifically delineate the water charges and follows the requirements of Chapter 13.

Mr. Mills states he currently handles customer service inquiries himself under an "open door policy" and is available to customers "seven (7) days a week within reasonable hours." Mr. Mills has informed Staff that he "fully intends to turn over the operation of the water system to an independent third party as soon as possible." Mr. Mills has asserted that many of the current customer service practices, such as his "open door policy," will change once a contract manager becomes involved with regulated water utility business matters for Mr. Mills. Staff notes that even if contract operations and/or contract management are utilized by Mr. Mills, all regulatory requirements will remain with Mr. Mills, as the regulated water utility. At the time of this memorandum, Staff has not reviewed any contract for proposed management, and has not included any cost of contract management in proposed rates.

CXD Staff sent a letter to Mr. Mills dated August 1, 2018, which included a copy of Chapter 13 along with some explanations of various rule requirements. CXD Staff participated in phone calls with Mr. Mills to assist in his understanding of the rules pertaining to customer service functions. In addition, CXD Staff has offered to share documents that may provide guidance to Mr. Mills in meeting various requirements of the rules.

### **REGULATORY COMPLIANCE ISSUES**

Staff notes that, assuming the Commission grants a CCN to be a regulated water utility, Mr. Mills will have obligations that include compliance with various regulations, including but not limited to 4 CSR 240 Chapters 3, 10, 13 and 50. Some specific items include keeping the aforementioned tariff current with any changes to requirements of customers, maintaining water quality to meet state and federal drinking water standards, complying with requirements for regularly occurring filings such as annual reports, developing customer billing procedures, the aforementioned recording of expenses in accordance with the Uniform System of Accounts, and the payment of annual assessments imposed by the Commission.

### **STAFF'S RECOMMENDATIONS AND CONCLUSIONS**

Staff's position, based on its review as described herein, is that the proposal for a new CCN issued to Mr. Mills to provide water service, along with approval of service area, rates, and depreciation rates as described in this Memorandum, serves the public interest as the operations providing service and the customers receiving the same will receive the attendant benefits of rate regulation and oversight; and, Staff recommends approval, with the conditions as outlined below.

### **STAFF'S RECOMMENDATIONS**

Staff recommends that the Commission:

1. Grant Mr. Mills a CCN to provide water service;
2. Approve the water service area depicted by the map and metes and bounds description included with this Memorandum;
3. Approve a quarterly flat rate for water service of \$344.17;
4. Require Mr. Mills, as a regulated water utility, to follow all applicable requirements pertaining to regulated water utilities;
5. Require Mr. Mills, as a regulated water utility, to create and keep financial books and records for plant-in-service, revenues, and operating expenses (including invoices) in accordance with the NARUC Uniform System of Accounts;
6. Require Mr. Mills to, going forward, keep and make available for audit and review all invoices and documents pertaining to the capital costs of constructing and installing the water utility assets;
7. Approve depreciation rates for water utility plant accounts as described and shown herein;
8. Require Mr. Mills to submit a complete tariff for water service, as a thirty (30) day filing, within ten (10) days after the effective date of approval of a CCN by the Commission;

9. Require Mr. Mills, as the regulated water utility, to submit information in this case file indicating he owns pertinent water utility real estate, and has access and control of water-related utility easements throughout the service area, within thirty (30) days after the effective date of approval of a CCN by the Commission;
10. Extend the requirement for Mr. Mills to submit a rate case before the Commission upon issuance of a CCN, as ordered in the Commission's *Report and Order* issued in WC-2017-0037, to submitting a rate case one year after the effective date of the issuance of a CCN in this case;
11. Make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding;
12. Require Mr. Mills to distribute to all customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the requirements of Commission Rule 4 CSR 240-13, within thirty (30) days after the effective date of approval of a CCN by the Commission;
13. Require Mr. Mills to provide to the CXD Staff a sample of three (3) bills from the first billing cycle after the effective date of approval of a CCN by the Commission; and,
14. Require Mr. Mills to file notice in this case once Staff recommendations Nos. 12-13 above have been completed.

Staff will submit a further recommendation regarding a water tariff to be filed by Mr. Mills in this matter.

Attachments:

- A: Proposed Revised Water Service Area Map
- B: Proposed Revised Water Service Area Description
- C: Staff's Estimated Plant-in-Service Accounts, Rate Base, and Capacity Adjustment
- D: Staff's Estimated Expenses and Rate Calculation
- E: Schedule of Depreciation Rates for Water Plant





**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                    )  
Necessity Authorizing it to Install, Own, Acquire,        )  
Construct, Operate, Control, Manage and                    )  
Maintain Water Systems in Carriage Oaks                    )  
Estates    )

Case No. WA-2018-0370

**AFFIDAVIT OF JAMES A. MERCIEL, JR.**

State of Missouri    )  
                                  ) ss.  
County of Cole        )

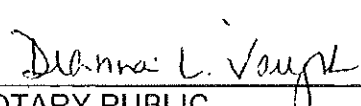
**COMES NOW** James A. Merciel, Jr., and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached Staff Memorandum; and that the same is true and correct according to his best knowledge and belief.

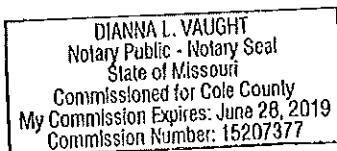
Further the Affiant sayeth not.

  
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James A. Merciel, Jr.

**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 11<sup>th</sup> day of October, 2018.

  
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NOTARY PUBLIC



**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 )  
 Necessity Authorizing it to Install, Own, Acquire, )  
 Construct, Operate, Control, Manage and )  
 Maintain Water Systems in Carriage Oaks )  
 Estates )


Case No. WA-2018-0370

**AFFIDAVIT OF BEN RANKIN**

State of Missouri )  
 ) ss.  
 County of Cole )

**COMES NOW** Ben Rankin, and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached Staff Memorandum; and that the same is true and correct according to his best knowledge and belief.


Further the Affiant sayeth not.

  
 \_\_\_\_\_  
 Ben Rankin

**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 11<sup>th</sup> day of October, 2018.

DIANNA L. VAUGHN Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: June 28, 2019 Commission Number: 15207377
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 NOTARY PUBLIC

**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                    )  
Necessity Authorizing it to Install, Own, Acquire,            )  
Construct, Operate, Control, Manage and                    )  
Maintain Water Systems in Carriage Oaks                    )  
Estates    )


Case No. WA-2018-0370

**AFFIDAVIT OF ASHLEY SARVER**

State of Missouri    )  
                                  ) ss.  
County of Cole        )

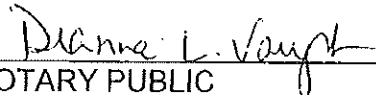
**COMES NOW** Ashley Sarver, and on her oath declares that she is of sound mind and lawful age; that she contributed to the attached Staff Memorandum; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.

  
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Ashley Sarver

**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 11<sup>th</sup> day of October, 2018.

  
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NOTARY PUBLIC

