

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

DERALD MORGAN, RICK AND CINDY)
GRAVER, WILLIAM AND GLORIA PHIPPS,)
and DAVID LOTT,)

Complainants,)

v.)

File No. WC-2017-0037

CARL RICHARD MILLS,)
CARRIAGE OAKS ESTATES,)
DISTINCTIVE DESIGNS, and)
CARING AMERICANS TRUST)
FOUNDATION, INC. (f/k/a Caring)
Americans Foundation, Inc.), CARRIAGE)
OAKS NOT-FOR-PROFIT WATER AND)
SEWER CORPORATION)

Respondents.)

POST-HEARING BRIEF OF RESPONDENTS

Respondents provide the following brief in accordance with the Public Service Commission’s (the “*Commission*”) order following the evidentiary hearing held on February 6, 2018.

INTRODUCTION

Carriage Oaks Estates (the “*Subdivision*”) is a private subdivision located in Stone County, Missouri and was developed in the early 2000’s by developer Carl Richard Mills (“*Mr. Mills*”) through his company Mills Properties Group Ltd. (“*Mills Properties Group*”). Despite the Subdivision’s large lots with beautiful views of the lake, the Subdivision has developed slowly. To date, only seven lots of the Subdivision are developed, with the majority of the lots still being held in inventory.

Despite the ambient environment, the atmosphere of the Subdivision has turned hostile as the homeowners find themselves involved in a dispute concerning the water and sewer systems

of the Subdivision (collectively, the “*Systems*”). For the first fifteen years following the Subdivision’s development, the *Systems* were owned by Mr. Mill’s trust and subsequently transferred to a limited liability company of which Mr. Mill’s trust is the sole member. In 2015, solely for estate planning purposes, Mr. Mills transferred the *Systems* to a 501(c)(3) organization; the same organization which will ultimately become the successor to the developer of the Subdivision upon Mr. Mills’ demise. For reasons which are still unclear, the transfer was not well received by a select number of homeowners.

In 2016, the Complainants, each of whom is a resident in the Subdivision, filed the claim at issue. Although no claims of high rates or poor water quality have been alleged, the Complainants have asked the Commission to assert jurisdiction over the *Systems*. Respondents have, and continue to maintain, the Commission does not have jurisdiction over the *Systems* because it is not a public utility. Largely, the Respondents contend that the failure to achieve public utility status lies in the small nature and service area of the *Systems* and the fact that the Respondents have never operated the *Systems* for gain.

Despite this factually supported positioned, in an attempt to end the dispute and restore peace to the Subdivision, the Respondents took the advice of the Commission’s staff (the “*Staff*”) and transferred the *Systems* to a non-profit water and sewer corporation formed under Section 393 of the Missouri Revised Statutes. In spite of this effort, the Complainants remain unsatisfied. Despite the Missouri Department of Natural Resources (“*DNR*”) determination that the non-profit organization is in compliance with statutory requirements, Complainants still contend that the non-profit is unfit. Multiple attempts to appease the Complainants have failed, and as a result, the Respondents now look to the Commission to bring a resolution to this dispute.

Although the Complainants advocate for the Commission to assert jurisdiction, the Respondents believe PSC jurisdiction will be harmful to the Subdivision. Any tariff set by the Commission would likely be substantially higher than the low rates for water and sewer services currently paid by residents of the Subdivision and there is no evidence that the services are or have been subpar.

LEGAL STANDARDS

A. Jurisdiction of the Public Service Commission

The Commission has jurisdiction over all public utilities, including water corporations and sewer corporations. §386.020 (43) RSMo. A sewer corporation is defined to include, “every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property for the collection, carriage, treatment, or disposal of sewage anywhere within the state *for gain*, except that the term *shall not include sewer systems with fewer than twenty-five outlets* (emphasis added). § 386.020(49) RSMo.

A water corporation is defined to include, “every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owing, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling or supplying *for gain* any water (emphasis added). § 386.020(49) RSMo.

Although not explicitly stated in the statutory definitions, the Missouri Court of Appeals has long held that an entity must be operated for public use before it may be classified as a public utility. *Hurricane Deck Holding Co. v. Public Service Com’n of State*, 298.S.W. 3d 260 (Mo. Ct. App. W.D. 2009). In the case of *Orlor*, the Commission noted that providing water and sewer

services to current and future subdivision residents did not rise to the level of classification as a public utility. *Orler v. Folsom Ridge, LLC, WC 2006-0082.*

B. Non-Profit Water and Sewer Corporations

Under §§393.847(3) and 393.933(3) RSMo the Commission shall not have jurisdiction over the construction, maintenance or operation, service, rates, financing, accounting or management of any nonprofit sewer corporation or nonprofit water corporation.

Under §§ 393.825(3)(1) and 393.900(3)(1) RSMo, prior to obtaining a permit to provide services, a nonprofit water and/or nonprofit sewer corporation shall provide a copy of the articles of incorporation and company bylaws to DNR to ensure compliance with all statutory requirements. DNR shall review the documents and provide the nonprofit water and/or nonprofit sewer corporation authorization to provide services if all statutory requirements are met. §§ 393.825(3)(1) and 393.900(3)(1) RSMo. If all statutory requirements have not been met, the department shall inform the nonprofit sewer or nonprofit water company of all deficiencies and assist such company in curing the deficiencies. *Id.*

C. Authority of the Commission

The powers of the Commission are set forth in Chapter 386 RSMo. While the Commission has the power to regulate the rates associated with public utilities, nothing within Chapter 386 RSMo gives the Commission the power to force an owner of public utilities to sell or transfer such utilities. *See generally §386 RSMo.*

STATEMENT OF FACTS

A. Relationship of the Respondents

The developer of the Subdivision is Mills Properties Group. *Transcript from Evidentiary Hearing on February 6, 2018 (“Tr.”) 134.* The sole member of Mills Properties Group is Mr.

Mills' personal trust. *Tr. 135-136*. Mills Properties Group also does business under the fictitious name Distinctive Designs in the state of Missouri. *Tr. 134-135*.

Carriage Oaks Estates Homeowners Association ("*Carriage Oaks HOA*") is the homeowners association which manages the Subdivision. *Tr. 149*. The membership of Carriage Oaks HOA is comprised of all homeowners within the Subdivision. *Exhibit from Evidentiary Hearing on February 6, 2018 ("Exhibit")13*. There are two distinct voting classes of Carriage Oaks HOA, Class A members who are entitled to one (1) vote per lot owned and Class B members, which consist of the developer, who are entitled to ten (10) votes per lot owned. *Tr. 150; Tr. 161; Exhibit 13*.

Carriage Oaks, LLC is an entity formed by Mr. Mills. *Tr. 138-139*. Mr. Mills is the sole member of Carriage Oaks, LLC. *Tr. 139*.

Caring Americans Trust Foundation, Inc. ("*Caring Americans*") is a 501(c)(3) nonprofit organization formed for the purpose of assisting other non-profit organizations. *Tr. 159; Tr. 142-143*. Mr. Mills is the founding member of Caring Americans and currently serves on its Board of Directors. *Tr. 143-144*. Upon Mr. Mills' demise, Caring Americans will become the successor to the developer of the subdivision. *Tr. 45*.

Carriage Oaks Not-For-Profit Water and Sewer Corporation ("*Carriage Oaks NFP*") is a nonprofit water and sewer corporation formed under Chapter 393 of the Missouri Revised Statutes for the purpose of holding the Systems. *Exhibit 24*.

B. Composition of the Subdivision

The Complainants, as well as Mr. Mills, currently reside in the Subdivision. *Exhibit 10; Tr. 72*. There are currently only seven developed lots in the Subdivision; however, a total of

eleven lots have been sold. *Tr. 66; Tr. 149.* Mr. Mills, as the developer, holds approximately twenty-three lots. *Tr. 80; Tr. 161.*

All lots in the Subdivision are subject to those certain Declaration of Easements Covenants and Restrictions which were properly filed with the Stone County Recorder of Deeds on June 1, 2001 (the “*Declaration*”). *Tr. 52; Exhibit 14.* Pursuant to such Declarations, all lots within the Subdivision must receive water and sewer services from the Systems. *Tr. 66; Exhibit 14.* Residents within the Subdivision are not allowed to drill wells or install their own sewer system. *Exhibit 14.* This provision is in line with the requirements for subdivisions set forth by DNR. *Tr. 82.* All residents of the Subdivision, including the Complainants, received a copy of the Declaration when purchasing their lot. *Tr. 52; Tr. 162.*

C. Ownership of the Systems

The Systems were originally owned by Mr. Mills’ personal trust. *Tr. 143-144.* In or around 2007, Mr. Mills transferred ownership of the Systems to Carriage Oaks, LLC for business and estate planning purposes. *Tr. 74; Tr. 139.* On or about April 2, 2016, Carriage Oaks, LLC transferred ownership of the Systems to Caring Americans for estate planning purposes. *Tr. 77; T. 45.* On or about January 27, 2017, Caring Americans transferred ownership of the Systems to Carriage Oaks NFP. *Tr. 77; Tr. 163.*

D. Carriage Oaks NFP

As an early attempt to settle the dispute between the Complainants and Respondents, the Staff suggested the transfer of the Systems to a non-profit water and sewer corporation formed under Section 393 of the Missouri Revised Statutes. *Tr. 163.* In an attempt to follow the Staff’s recommendation, Respondents formed Carriage Oaks NFP and transferred the Systems from Caring Americans to Carriage Oaks NFP. *Id.*

Pursuant to the governing statutes, Carriage Oaks NFP adopted a set of bylaws governing the organization (the “Bylaws”). *Exhibit 15*. Under Section 1 of the Bylaws, all individuals who receive water and sewer services in Subdivision are members of Carriage Oaks NFP. *Id.* Additionally, pursuant to Section 2 of the Bylaws, each Membership Interest (as defined in the Bylaws) is entitled to one vote. *Id.* Under Section 4 of the Bylaws, Carriage Oaks NFP shall only provide water and sewer services within the geographic boundaries of the Subdivision. *Id.*

In accordance with §393.900 RSMo, the Respondents submitted the Bylaws to DNR for review to ensure compliance with all statutory requirements. *Tr. 38; Exhibit 19*. The Respondents received confirmation from DNR stating that Carriage Oaks NFP meets all statutory requirements. *Tr. 170; Exhibit 19*. Subsequently, DNR issued an operating permit, authorizing Carriage Oaks NFP’s operation of the Systems. *Tr. 171-172; Exhibit 20*.

E. Provision of Water and Sewer Services

At all times the Systems have only provided services to the residents of the Subdivision. *Tr. 164-165*. The Systems are currently not capable of providing services to those outside of the Subdivision. *Id.* In addition to the lack of capability, the geographic nature of the Subdivision provides little to no customers to market the services to outside the Subdivision. *Tr. 164-165; Exhibit 16*. As the current owner of the Systems, Carriage Oaks NFP has no plans to sell the water or sewer services outside the Subdivision. *Id.*

There are currently only seven actual connections which receive water and sewer services from the Systems. *Tr. 154*.

G. Amounts Charged for Water and Sewer Services

Since the inception of the Subdivision, the cost associated with the water and sewer services have been passed on to residents through their annual assessments to Carriage Oaks

HOA. *Tr. 118.* Until the year 2014, the residents, through their assessments, were only charged for all out-of-pocket expenses associated with the maintenance of the Systems, such as chemicals, testing, and permits. *Tr. 119-120.*

In 2014, Distinctive Designs began charging Carriage Oaks HOA (and subsequently the homeowners of the Subdivision) a flat fee of \$6,450 per year for their management and maintenance of the Systems. *Tr. 89-90.* Of the \$6,450 per year fee, \$2,250 is attributable to the maintenance for the Systems and \$4,200 is attributable to the management of the Systems. *Exhibit 18.* The rate charged by Distinctive Designs is competitive with a 2014 quote provided by White River Valley¹ for similar services. *Tr. 92; Exhibit 18.*

With the exception of assessment for the calendar year 2017, which included an additional special assessment for road improvements, the highest assessment ever charged by Carriage Oaks HOA to residents of the Subdivision was \$1,250. *Tr. 156-157.* In addition to the provision of water and sewer services, these assessments charged by Carriage Oaks HOA also includes the upkeep and maintenance of common areas, gates, and roadways. *Tr. 58; Tr. 114; Tr. 156.* The homeowners have never been charged more than \$104.00 per month for water, sewer and maintaining the subdivision.

Due to the increased use and burden placed on the water system caused by residents' over-irrigation of their lots during the summer months, approximately \$40,000 was expended by the Respondents in 2014 to upgrade the water system of the Subdivision. *Tr. 165-166.* Despite their previous verbal agreement to pay for such upgrades at the 2014 Carriage Oaks HOA annual meeting, the homeowners subsequently refused to repay the Respondents for such upgrade. *Exhibit 12.* In supporting their argument to not fund the upgrades and neglecting to accept that the Systems were designed by Mr. Jack Holt, PE civil engineer per DNR requirements (without

¹ White River Valley is a not-for-profit water and sewer company.

exception), Complainants state that the water system was substantially under designed by the developer. *Exhibit 27; Exhibit 16*. Despite the fact that PE civil engineer Michael Stalzer has confirmed that the issues regarding the water system were not attributable to the developer's design, but rather a substantial over use of the water by the homeowners, the Complainants still deny responsibility. *Tr. 179-180; Exhibit 26*. Respondents have yet to seek reimbursement from the homeowners for such additional expense associated with the upgrade to water system. *Tr. 169*.

Complainants also have been afforded the opportunity to examine the financial records of Respondents to ensure all amounts expended for the Systems were properly accounted for. *Tr. 184*.

H. Attempt to Accommodate Complainants Demands

At the 2017 Carriage Oaks HOA annual meeting, Complainants stated that they would like an independent third party to manage and maintain the water and sewer system. *Tr. 174*. In a continued attempt to accommodate the demands of the Complainants, the Respondents sought a quote for such management and maintenance services from Ozarks Environmental Services, a local nonprofit water and sewer corporation, similar to Carriage Oaks NFP, operating in Southwest Missouri. *Tr. 173-174*. Ozarks Environmental Services provided the Respondents with a quote of \$94.25 per month for sewer services and \$68.25 for the first 3,000 gallons water services, with additional amounts being added for more water usage. *Exhibit 26*. Respondents promptly distributed the quote to each of the homeowners. *Tr. 175-176*. Despite advocating for this action, none of the homeowners, including the Complainants, voted in favor of this proposal. *Tr. 176*.

ARGUMENT

A. The Commission Does Not Have Jurisdiction

The Commission lacks jurisdiction over the Systems because the Respondents have not operated the Systems for gain, the sewer system does not meet the minimum twenty-five connection threshold, and the Systems are not a public utility.

I. Gain

Black's Law Dictionary defines "gain" as, "an increase in amount, degree or value". BLACK'S LAW DICTIONARY 750 (9th ed. 2009). The Respondents' operations of the Systems have never produced a gain. For approximately the first fourteen years of operation, the Respondents only charged the homeowners their direct out of pocket expenses incurred in the upkeep and operation of the Systems, such as chemicals, testing, and permits. All such expenses were paid directly by Carriage Oaks HOA and subsequently passed on to the homeowners through assessments. The fees, time, and expenses associated with the management and maintenance of the Systems were absorbed directly by the Respondents, at no charge.

As a direct result of the homeowners substantial over irrigation of their lawns during the summer months, the water system of the Subdivisions required repairs in 2014. When faced with the decision of cutting back on their irrigation or upgrading the system, the homeowners verbally approved a \$40,000 upgrade to the water system to accommodate the increased use. After the Respondents fronted the money and installed the upgraded system, the homeowners refused to pay. Respondents have yet to receive any sort of reimbursement from the homeowners for this upgrade.

Even after the Respondents began charging to cover management costs in 2014, the Respondents clearly did not operate for a gain. The total the Respondents have been paid for

management and maintenance of the Systems for the years 2014-2017 is approximately \$25,800. Even after excluding the value of their management and maintenance efforts for the first fourteen years of the Subdivision, this still leaves the Respondents with an operating deficit of approximately \$14,200 for their management and maintenance of the Systems after taking into account the \$40,000 spent in water system upgrades. The Respondents should not be classified as providing the services for a gain when they are actually operating at a deficit.

Additionally, a comparison of the rates charged by Respondents for the management and maintenance services negates the fact that the Respondents operate for a gain. With the exception of the calendar year 2017, which included a special assessment for road improvements, the most the Respondents have paid in assessments was \$1,250, which equates to approximately \$104 per month. This amount covers not only the provision of unlimited water and sewer services, but also upkeep and maintenance of the common areas. In examining the quote for management and maintenance services from Ozarks Environmental Services, a *nonprofit* water and sewer corporation, similar services would cost the homeowners a minimum \$162.50 per month. Ozarks Environmental Services, an organization which by its very nature *cannot operate at a gain*, would charge the homeowners at least \$58.50 more per month than the amount charged by the Respondents.

Respondent Caring Americans is a nonprofit organization which has received 501(c)(3) status. By its very nature, and in order to keep its tax exempt status, Caring Americans cannot operate for gain at any time. Caring Americans continual recognition as a 501(c)(3) organization is additional evidence that it has never operated for a gain.

Respondents also note that Complainants have been given full transparency to the checkbooks and ledger of Carriage Oaks HOA. To the extent there were charges or other

amounts being paid directly to Mr. Mills or the Respondents for their services, such amounts would have been discovered, and no doubt brought to light, by the Complainants.

In light of these facts, Respondents should not be classified as operating the Systems for a gain.

2. Sewer Connections

The Subdivision currently only has seven active water and sewer connections which provide services. Although all lots have the potential to be hooked up to the Systems, per the requirements of DNR, only seven lots are truly connected. Because the sewer system of the Subdivision does not meet the minimum threshold of twenty-five connections, the Commission lacks jurisdiction over the sewer system.

3. Public Utility

The Systems serve only a small, select group of individuals: the homeowners of the Subdivision. Due to the physical geography of the Subdivision it would be unduly burdensome, if not impossible, to offer water and sewer services to those individuals outside of the geographic area of the Subdivision. The Respondents have no desire to sell such services to outside individuals. Additionally, under the Bylaws, the selling of water and sewer services outside of the geographic boundaries of the Subdivision is expressly prohibited. Therefore, because the Systems serve only a select group of people, they should not be classified as a public utility and should be exempt from the jurisdiction of the Commission. *See, Orlor v. Folsom Ridge, LLC*, WC 2006-0082.

B. Carriage Oaks NFP is Outside the Jurisdiction of the Commission

Pursuant to the statutes, the Commission shall not have jurisdiction over nonprofit water and sewer corporations such as Carriage Oaks NFP. Despite the Complainants attempt to muddy

the water by claiming that Carriage Oaks NFP is an invalid entity, all statutory requirements have been met in forming Carriage Oaks NFP.

In accordance with §393 RSMo, DNR has been vested with the power and authority to review all nonprofit water and sewer corporation's bylaws and articles of incorporation to ensure compliance with all statutory requirements. If, after a review of the underlying documents, DNR finds that the nonprofit water and sewer corporation is in compliance, it shall provide the entity with authorization to provide services.

Complainants' argument that Carriage Oaks NFP is not in compliance with the statutory requirements fails to acknowledge that DNR has previously held that the Bylaws fulfill all statutory requirements. On top of the letter acknowledging compliance, DNR has also issued an operating permit to Carriage Oaks NFP; a blatant signal of its authorization for Carriage Oaks NFP to proceed with the operation of the Services.

To the extent such alleged deficiencies in the Bylaws need to be addressed, Respondents deny all such deficiencies. Complainants largest discontent with the Bylaws rest on the fact that members may hold more than one membership interest, with such membership interest and voting power having a direct correlation with the number of lots in the Subdivision such member holds. This membership interest and voting structure is meant to mirror the voting structure of Carriage Oaks HOA. Members are allowed to vote in proportion to their ownership percentage of overall lots, thereby giving each member an equitable say. Unlike Carriage Oaks HOA, each member of Carriage Oaks NFP is only given one vote per lot, with no special designation of voting class for the developer. What Complainants also fail to acknowledge is that the voting power of Mr. Mills in both Carriage Oaks NFP and Carriage Oaks HOA will diminish as the lots are sold. There is no mechanism in either entity's bylaws to give Mr. Mills unlimited control.

To invalidate the current voting structure of Carriage Oaks NFP and allow for only one vote per member, regardless of ownership structure, would allow Complainants a mechanism for circumventing the limited power granted to them by the Declarations; a power structure they each agreed to when they purchased their lot in the Subdivision.

Complainants also allege that they are not members of Carriage Oaks NFP, thereby causing Carriage Oaks NFP to be in statutory violation because it is providing services to individuals who are not members. Complainants should not be allowed to disclaim their membership interest merely in an attempt to invalidate Carriage Oaks NFP. Furthermore, Complainants are members of the non-profit organization. When the Complainants purchased their lots, and thereby agreed to be bound by the Declarations, they were aware that they had no right to install their own water or sewer system and they would always be subject to the water and sewer systems offered to the residents of the Subdivision. Under the Declarations, they were also aware that there existed a possibility that the developer could one day transfer the water and sewer systems to an outside entity. Simply put, the Complainants purchase of their lot in the Subdivision was their agreement to be a member of all future organization which could provide water and sewer services to the Subdivision.

Complainants also allege the Bylaws are invalid because they purport to offer services to prospective members. This argument is founded on inaccuracies and a stretch of the term “prospective members”. As already discussed, Carriage Oaks NFP is prohibited from, and has no desire to, sell services to those outside the geographic area of the Subdivision. To the extent Complainants are seeking to classify those lots which do not yet receive water and sewer services as “prospective members”, such classification is inaccurate. Although such members do not currently receive services from Carriage Oaks NFP, services will be provided upon the

development of the lot. Like the Complainants, these undeveloped lot owners are subject to the Decelerations and therefore will one day receive water and sewer services from Carriage Oaks NFP. The term “prospective customer” implies that such lot owner may or may *not* one day purchase services from Carriage Oaks NFP.

C. Remedy Sought By Complainants

In their Amended Complainant, Complainants ask the Commission to transfer ownership of the Systems to Carriage Oaks HOA. Under Section 386 RSMo, the Commission does not have the power to force the Respondents to sell or transfer ownership of the Systems. Therefore, even if the Commission were to find that it has jurisdiction, the Complainants’ requested remedy cannot be granted.

D. Consequences of Commission Jurisdiction

Since the Complainants have filed this claim with the Commission, their driving factors for filing such complaint and their ultimate remedy have been unclear. Respondents note that nowhere in the Complainants pleadings nor in the evidentiary hearing, did Complainants allege wrong doing by the Respondents, such as high rates or poor water quality. Aside from one allegation concerning the installation of a water meter on an uncooperative homeowner’s lot, Complainants only basis is that the Respondents *could* be abusive in their behaviors.

The Respondents believe the Complainants have not fully thought through the potential ramifications of the Commission establishing jurisdiction over the Systems. The homeowners currently pay approximately \$104 per month for unlimited water and sewer services. Given the size of these homeowners’ lots and their accompanying home and water usage, this amount is extremely low. In the event the Commission was to establish jurisdiction, common knowledge dictates the accompanying tariff set by the Commission would be substantially more than the

amount currently paid for water and sewer services. This result would not only have an adverse financial impact on the Complainants, but most importantly, the innocent homeowners in the Subdivision who had no desire to be a party to this complaint. The selfish desires of the Complainants should not be allowed to have a direct impact on the innocent homeowners.

CONCLUSION

Despite the Complainants attempts to play the victim in these proceedings, it is actually the Respondents who have been harmed the greatest. What was once a quiet, peaceful neighborhood is now filled with contention and hostility, all centered around the Systems. Although under no obligation to do so, Respondents have tried multiple times to appease the Complainants demands; yet such responses continues to be met with discontent by the Complainants. Respondents have been forced to spend tens of thousands of dollars in legal fees to defend themselves in this action and have ultimately had to stop their efforts to market the lots in the Subdivision until this complaint has been resolved. On top of the damage to the Respondents, Complainants demands have impacted the other innocent homeowners in the Subdivision.

Due to the size of the Subdivision and the provision of the water and sewer services, the Commission lacks jurisdiction over the Systems. Carriage Oaks NFP, the entity currently set up to own the Systems, is valid and in statutory compliance. Finally, the relief Complainants seek (transfer of the Systems) is outside the Commission's authority.

In an effort to end this dispute, restore peace to the Subdivision, and protect the homeowners of the Subdivision, the Respondents pray the Commission rules that it does not have jurisdiction over the Systems and could not provide Complainants the relief they seek even if it did.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The below signed counsel hereby certified that a true and accurate copy of the foregoing was sent to all counsel of record via email on February 28, 2018 to the following email address:

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