

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

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

INITIAL BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW the Office of the Public Counsel (“OPC”) and for its *Initial Brief*, states as follows:

- 1. Does 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.?**

The *Joint Stipulation of Agreed Upon Facts* filed by all parties of record on April 16, 2019, included the following facts: (1) “[t]here are 32 developed lots within the Carriage Oaks Estates subdivision;” (2) “[h]omes are constructed on seven (7) lots, and are connected to the water system;” and (3) “[t]here is a need for the service.” Given these facts, it would appear that all of the parties to this case can agree that it is necessary and convenient for the public service for *someone* to be operating the Carriage Oaks Estates water system. The critical question in this case, therefore, turns on who that “someone” ought to be. Mr. Carl R. Mills has filed this application seeking to become the “someone” needed to operate the Carriage Oaks Estates water system and the interveners in this case (Mr. Derald Morgan *et al.*) seek to prove Mr.

Mills is not qualified to be that “someone.” No other party to this case has proffered another person (either an individual or legal entity) to operate the Carriage Oaks Estates water system as an alternative to Mr. Mills.

Had another potential operator for the Carriage Oaks Estates water system been offered in this case, the OPC would have argued strenuously that the Commission needed to consider all possible alternatives in order to give due consideration to the question of whether issuing a CCN to Mr. Mills served the public interest. As the situation currently stands, however, there is no need to make such an argument.¹ Therefore, because the OPC is aware of no other options regarding an operator for the Carriage Oaks Estates water system based on the evidentiary record and pleadings presented and the intervening customers of the system oppose the granting of the CCN, the OPC chooses to exercise its discretion by declining to take an opinion regarding this first point.

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

If the Commission grants Mr. Mills a CCN, then it should impose those requirements set forth in Staff’s *Recommendation* attached as Appendix A to the rebuttal testimony of Amanda C. McMellen. *See* exhibit 100, *Rebuttal Testimony of Amanda C. McMellen*, app. A. In addition to these, there is at least one other issue

¹ The OPC does note that one potential alternative to granting Mr. Mills’ requested CCN would be to issue an order initiating the process to place the Carriage Oaks Estates water system into receivership under the authority granted by section 393.145. However, the OPC is unaware of any other party having made this argument at this point in the case and the OPC declines to explore this possibility itself. The OPC will instead leave such arguments to the interveners to make (if they so choose).

that the Commission needs to consider regarding any potential CCN it approves. The McMellen rebuttal testimony included an update to Staff's previous recommended flat quarterly rate that resulted in a final recommended rate of \$271.42 a quarter. *Id.* at pg. 4. At the evidentiary hearing, however, Staff offered as exhibit 102 a further update to its recommended flat quarterly rate that increased the previous \$271.42 quarterly rate by \$18.26 a quarter to a total of \$289.68 a quarter. Exhibit 102, *Updated D-1*, pg. 1. The update found in Exhibit 102 was premised on Mr. Mills entering into a contract with a third party operator for management of the system. Tr. vol. 2 pg. 157 ln 8 – pg. 159 ln 10.

For Staff to have contemplated updating its proposed quarterly rate to include the cost of an operation management company makes sense given that Mr. Mills' surrebuttal testimony clearly indicates he was considering entering into a management contract with the Ozarks Clean Water Company and even attached a copy of the proposed contract. Exhibit 3, *Surrebuttal Testimony of Carl Richard Mills*, pg. 4. However, it was disclosed during the evidentiary hearing that Mr. Mills had recently ceased using the services of the Ozarks Clean Water Company and was not currently under contract with any other management company. Tr. vol. 2 pg. 88 ln 24 – pg. 89 ln 17. This obviously creates something of a problem.

To reiterate, Staff has presented two proposed quarterly rates: a \$271.42 quarterly rate *without* an operational management company; and a \$289.68 quarterly rate *with* an operational management company. Further, at this point in time Mr. Mills is managing the Carriage Oaks Estates water system *without* the

assistance of a contracted operating company. This leaves the Commission with essentially two good options when it comes to granting Mr. Mills a CCN. The Commission could either approve a quarterly flat rate for water services of \$271.42 (which is consistent with what Staff recommended if Mr. Mills had *not* contracted with an operating company), or the Commission could approve a quarterly flat rate for water services of \$289.68 and then further *require* Mr. Mills to seek out, enter into, *and maintain* a contract with an operating company to help manage the Carriage Oaks Estates water system. The one thing that the Commission should *not* do, though, is grant Mr. Mills a CCN and approve the quarterly flat rate for water services of \$289.68 (which, again, Staff calculated based on the Carriage Oaks Estates water system being under contract with an operating company) without requiring Mr. Mills to actually employ the services of some operating company. Again, the Commission either needs to approve the lower quarterly rate because Mr. Mills does not currently have a contract with an operating company or approve the higher quarterly rate but then *require* Mr. Mills to employ the services of an operating company.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this *Initial Brief* and grant such relief as requested herein.

