

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

In the Matter of the Application Carl Richard Mills       )  
d/b/a Carl R. Mills Water Service for a                        )  
Transfer of Assets to the Carriage Oaks                       )  
Estates Homeowners Association                                )

**File No. WM-2020-0387**

**STAFF RESPONSE**

**COMES NOW** the Staff of the Missouri Public Service Commission and for its  
*Staff Response*, states as follows:

**Summary**

1. Staff opposes the Intervenor's Motion to Strike for the reasons set forth below. Staff opposes the Intervenor's Motion to Dismiss to the extent it is based on an argument that the Carriage Oaks Estates Homeowners Association would be subject to the Commission's jurisdiction, and to the extent it is based on an argument that the Mr. Mills' Application is deficient, the appropriate remedy is an Order requiring an amended or supplemental Application.

**Procedural History and Relevant Facts**

2. On June 1, 2020, Carl Richard Mills d/b/a Carl R. Mills Water Service filed an application to gift a water system to Carriage Oaks Estates Homeowners Association. That same day, the Commission directed notice of the application and ordered that any motion for intervention was due no later than June 16, 2020.

3. Derald Morgan, Rick and Cindy Graver, William and Gloria Phipps, and Davie Lott ("Intervenor's") filed their *Application to Intervene*, by and through their undersigned counsel Karl Finkenbinder and Hampton Williams on June 12, 2020, pursuant to Commission Rule 20 CSR 4240-2.075.

4. Counsel for the Intervenor also filed on June 12, 2020, on behalf of the Intervenor, a *Motion to Strike Application* and a *Motion to Dismiss* the application of Carl Richard Mills. In an order issued on June 16, 2020, the Commission directed Staff to file a response to the Intervenor's *Motion to Strike Application* and *Motion to Dismiss*, no later than June 26, 2020.

5. On June 22, 2020, Staff filed its *Objection to the Application to Intervene* in which Staff stated it objects to Mr. Williams' representation of the Intervenor in this matter, in so much as Mr. Williams' representation of the Intervenor is a violation of Missouri Supreme Court Rule 4-1.11(a). Staff further objects to the representation of the Intervenor in this matter by a firm with which Mr. Williams is associated because Mr. Williams was not timely screened from any participation in the matter, in so much as such representation would be a violation of Rule 4-1.11(b).<sup>1</sup>

6. For the reasons stated in *Staff's Objection to the Application to Intervene*, Staff maintains its objection to Mr. Williams' representation of the Intervenor, and to the same extent to the representation of the Intervenor by any lawyer in a firm in which Mr. Williams is associated but has not been appropriately screened. As such, Staff believes the *Motion to Strike Application* and *Motion to Dismiss* filed by Mr. Williams and Mr. Finkenbinder are improper and should not be granted.

7. In File No. WA-2018-0370, the Commission concluded that Mr. Mills "owns a 'water corporation' and a 'public utility' as defined in Sections 386.020(59) and

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<sup>1</sup> Staff's objection is based on a narrow interpretation of Rule 4-1.11(a), in which former Staff attorneys would be barred (absent informed consent, confirmed in writing) from participating in matters involving the same parties, having the same disputes, based on the same operative set of facts, over the same regulated property. Former Staff attorneys would not be barred from participating in other matters before the Commission under Staff's interpretation.

386.020(43), RSMo, respectively, and as such is subject to the personal jurisdiction, supervision, control and regulation of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes”. Also in File No. WA-2018-0370, subsequent to its conclusion that Mr. Mills was subject to the Commission’s jurisdiction, a certificate of convenience and necessity (CCN) to provide water service within the Carriage Oaks Estates subdivision service area was granted to Carl Mills the person, not the Trust.

8. Section 386.020(43), RSMo. defines a "Public utility" to include every pipeline corporation, gas corporation, electrical corporation, telecommunications company, **water corporation**, heating company or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter (emphasis added).

9. Pursuant to Section 386.020(59), RSMo. a “Water Corporation” includes every corporation, company, association, joint stock company or association, partnership **and person**, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water (emphasis added).

10. On June 1, 2020, Carl Richard Mills, on his own behalf, filed an application with the Commission in which he seeks authorization to transfer via gift the water system assets held in his name to the Carriage Oaks Estates Homeowners Association. Mr. Mills has not indicated an intent to represent the Carriage Oaks Estates Homeowners Association, and the Association is not a party to this matter. Mr. Mills’ later filed an

amendment to his application on June 9, 2020, in which he provided additional information.

11. The system and property Mr. Mills wishes to transfer via gift in this instant application are registered to Carl Mills the person, and Staff is not aware that any of the assets in the current application are held in a trust (see Exhibit A, attached).

**The Commission should deny Intervenor's Motion to Strike**

12. Intervenor's Motion to Strike should be denied because it lacks sufficient basis. Commission Rule 20 CSR 4240-2.040(5) permits a natural person to represent himself or herself in practice before the Commission.

13. Mr. Mills is a natural person who meets the definition of "water corporation" under Section 386.020, RSMo (2016), as determined by the Commission in File No. WA-2018-0370.

14. A natural person meeting the definition of a "water corporation" under Section 386.020 does not create a separate legal entity, just as a corporation or partnership meeting that definition does not create a separate legal entity. The Carriage Oaks Estates Homeowners Association is not a party to this matter, and Mr. Mills did not purport to represent them in the Application. The mere allegation that the Carriage Oaks Estates Homeowners Association intends to take part in the transfer is insufficient to allow any reasonable inference that Mr. Mills intends to represent a homeowners association.

**The Commission should deny Intervenors' Motion to Dismiss, and the  
Commission should issue an Order to Amend or Supplement the Application to  
the extent the Application is deficient**

15. Furthermore, while Staff has not conducted a full review and investigation of Mr. Mills' application in this matter, Staff has completed a cursory review. Based on this review, Staff has not discovered any facts or deficiencies in Mr. Mills' application that would require the Commission, by law, to dismiss Mr. Mills' application. Staff also has no reason to believe at this time that Mr. Mills has made any misstatements of fact that would necessitate the Commission strike any portion of Mr. Mills' application at this time.

16. Pursuant to Section 393.190, RSMo. no water corporation may transfer its assets or franchise without having first secured authorization from the Commission. Absent a waiver or variance, applications to the Commission seeking authorization to transfer must abide by the filing requirements in Commission Rules 20 CSR 4240-2.060 and 20 CSR 4240-10.105. 20 CSR 4240-2.060(2) and 20 CSR 4240-10.105(3) each state, "If any of the items not required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought."

17. Whether the Carriage Oaks Estates Homeowners Association would constitute a "public utility" as defined by Section 386.020(43), RSMo. and a "water corporation" pursuant to 386.020(59), RSMo. subject to the personal jurisdiction of the Commission is a question of fact, which Staff will investigate in the course of its review, and cannot be addressed solely on the face of the pleadings in this case.

18. If the Commission directs Staff to file a recommendation on Mr. Mills' instant application, and during Staff's investigation Staff becomes aware of facts that would

necessitate the Commission dismiss Mr. Mills' application or strike all or portions of it, Staff will inform the Commission at that time. However, at present, based on the current facts and circumstances, Staff does not recommend the Commission dismiss or strike Mr. Mills' application.

19. The Commission should deny the Intervenor's Motion to Dismiss, and to the extent the Commission believes Mr. Mills' application is deficient in any way, the Commission should issue an order requiring Mr. Mills to further amend or supplement his application.

**WHEREFORE,** Staff submits this *Staff Response* for the Commission's consideration; and grant such other and further relief as is just in the circumstances.

Respectfully submitted.

**/s/ Jamie S. Myers**

Jamie S. Myers  
Associate Counsel  
Mo. Bar No. 68291  
200 Madison St, Ste. 800  
P.O. Box 360  
Jefferson City, MO 65102  
Phone: 573-526-6036  
Fax: 573-751-9285  
E-mail: [jamie.myers@psc.mo.gov](mailto:jamie.myers@psc.mo.gov)

Attorney for the Staff of the  
Missouri Public Service Commission

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 26<sup>th</sup> day of June 2020, to all counsel of record.

**/s/ Jamie S. Myers**

Stone County Work Card			
Property Number		Owner - Mailing Address	Situs Address
14-1.0-12-000-000-002.018		MILLS, CARL R C/O: 209 FALLING LEAF CT	DBA:
TaxCd	Year		
17	2020	BRANSON WEST MO 65737	

Property Description	Sec-Twp-Rng	Land Type	Lot Size	Acres
CARRIAGE OAKS ESTATES PH-1 WELL LOT	12-22-23	EX		0.36

Book-Page	Date Acq	School	Fire	City	Amb	JUCO
2019-3313	2019-03-08	4	5	0	0	0

TYPE	LAND VAL	STRUCT VAL	TOTAL VAL	TOTAL ASSESS
RES	\$9,000	\$0	\$9,000	\$0
AGR	\$0	\$0	\$0	\$0
COMM	\$0	\$0	\$0	\$0
VAC	\$0	\$0	\$0	\$0
TOTALS	\$9,000	\$0	\$9,000	\$0

#	AG LAND ACRES	GRADE	PER ACRE	VALUATION
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LAND DATA											
CLASS	TYPE	AVG	DF	SFF	FF/ACRES	DEPTH	UNIT PRICE	DEPTH FAC	ADJ FAC	ADJ AMT	VALUATION
2	5	0	0	0	0.36	0.0	25000.00	0.00	0.00	0.00	9000.00

IMPROVEMENTS																							
Bldg No.	Struct	Yr Built	Yr Rem	Eff Yr	Stor	Bd Rm	Room	Class RateCd	Class Units	Const Units	Total Units	Base Rate	Adj Rate	Index	SqFt Cost	Base Area	Adj Area	Base Cost	Extra Feat	Replace Cost	Phy Cond	Adj Cond	Appraised Value