

Exhibit No.:
Issue: Transfer of Water and Sewer System
Witness: Derald Morgan
Sponsoring Party: Complainants
Type of Exhibit: Sur-Rebuttal Testimony
Case No. WC-2017-0345
Date Prepared: January 18, 2018

**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.))

Respondents.)

**SUR-REBUTTAL TESTIMONY OF DERALD MORGAN ON BEHALF OF
COMPLAINANTS**

**Branson, Missouri
January 18, 2018**

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1 SUR-REBUTTAL TESTIMONY OF DERALD MORGAN

2
3 I. Introduction

4
5 Q. Please state your name.

6 My name is Derald Morgan.

7 Q. Have you had an opportunity to review the testimony of Carl Richard Mills submitted
8 by Respondents in this case?

9 Yes.

10 II. Disputing Mills' Testimony

11 Q. Was there any testimony by Mr. Mills that you dispute?

12 Yes.

13 Q. Can you point out to me which portions of Mr. Mills' testimony you dispute?

14 Yes.

15 Q. Which portions do you dispute?

16 The first portion I disagree with is Mr. Mills' statement that in 2014, the homeowners at
17 Carriage Oaks verbally promised to pay his company \$40,000.00 for an upgrade to the water and
18 sewer system. I am a Carriage Oaks homeowner and was one in 2014. I never made any promise
19 to reimburse for those specific upgrades. Furthermore, Mr. Mills seems to imply that he is
20 charging a higher rate now to recoup his expenses on the upgraded the system that he initially
21 installed negligently. However, under the declaration, his entity, as developer, had an obligation
22 to pay for the system and he made earlier promises to pay for it. Also, Mr. Mills testified that
23 each year Distinctive Design or its subsequent entities invoiced the homeowners' association.
24 Yet, the members of the homeowners' association have nothing to do with the systems. Mr. Mills
25 also claims the water and sewer facilities were never operated for gain. Mr. Mills seems to be

1 under the impression that since the owners of the systems never received any “direct” payment
2 from the owners, he never charged them fees. This is ludicrous since he admits he invoiced the
3 homeowners’ association, which then in turn paid the invoices from money it collected from the
4 homeowners.

5 The composition of the board for Carriage Oaks Not-for-Profit is also worth pointing out.
6 It consists of Mr. Mills’ romantic partner, two of his family members, himself, and one neighbor
7 who lives in Italy. Not a single complainant serves on this board. Not a single person that lives
8 permanently except for Mills serves on his board. Mr. Mills’ also claims that complainants are
9 members of the not-for-profit and claims that the not-for-profit has adopted bylaws. Yet, no
10 evidence has been presented that there was ever a meeting where such members met to approve
11 these bylaws or who approved them. Petitioners never agreed to be members of the not-for-
12 profit, never approved the bylaws, and have never participated in any vote for the non-profit or
13 its formation. This violates Section 393.839.

14 Further he claims that since we would not pay for the tank that, he has to have Caring
15 Americans pay for the tank but when asked for financial records from Caring Americans related
16 to operation of the water system he produced none.

17 The real reason he dropped the idea of the members of the HOA paying for the tank to
18 the water system is that we produced evidence that he told the DNR that as the number of houses
19 grew, he would add a tank or tanks to the system to meet the supply requirements of the system.
20 These documents showing his agreement with the DNR on the development of the water system
21 are a matter of public record and he is bound by his duty in his application.

22 **Q. Are there any other portions of Mr. Mills’ testimony you dispute?**

1 Yes. Mr. Mills states he is the president of Carriage Oaks Estates Homeowners'
2 Association. While this may be true, I'd like to point out that no vote has ever occurred and no
3 board has ever been elected. Mr. Mills also states that Mills Properties Group, Ltd. is the
4 developer when actually Carriage Oaks, LLC developed the property. Additionally, Mr. Mills
5 claims that Carriage Oaks Estate has its own water and sewer facility. That's not true. If Caring
6 America and now some new non-profit owns the water and sewer facility, Carriage Oaks Estate
7 and its homeowners' association do not own the facility.

8 Mr. Mills also testified that the purpose of the transfer of ownership was for estate
9 planning purpose. Mr. Mills shouldn't be allowed to play with the water and sewer services for
10 the homeowners for his own personal tax benefit.

11 Mr. Mills' testified that Complainants have never voiced an objection to being a member
12 of the Carriage Oaks Not-for-Profit. That's inaccurate. The Complainants have repeatedly
13 expressed their concern about any entity operating the water and sewer system that is controlled
14 by Mr. Mills' or one of his entities. And that's the problem the Complainants have with the
15 Carriage Oaks Not-for-Profit. We remain voiceless as to the operation and services provided by
16 Carriage Oaks Not-for-Profit as long as Mr. Mills' voting rights outnumber ours. At this point in
17 time, we are powerless. Mr. Mills' continues to operate the water and sewer service in the
18 manner he sees fit.

19 **Q. Why do you believe Mr. Mills' will control and operate the water sewer system to his**
20 **benefit?**

21 First, because under the bylaws Carriage Oaks Not-for-Profit, he maintains the ability to
22 control the Not-for-Profit. The Bylaws are written in a manner that gives each owner and any
23 owner that will receive water or sewer services in the future a vote. Mr. Mills' entire testimony

1 on page 10, lines 3-13 demonstrate how Respondents have violated Section 393.825, et seq. and
2 393.900, et. seq. since these sections require that a member must currently use the services in
3 order to be entitled to vote. Mr. Mills' and/or his board or legal entities own most of the lots at
4 Carriage Oaks. Most of those lots are vacant and do not receive the water and sewer services.
5 Despite them not currently receiving the services, Mr. Mills' gets to vote for each of those lots.
6 Secondly, Mr. Mills' past behavior has indicated that he will abuse the operation of the water and
7 sewer system and disregard the interests and concerns of Complainants. His own testimony
8 demonstrates that the transfer was for estate planning purposes.

9 Recently Mr. Mills decided that my connection to the water system was incorrect. He was
10 wrong and no amount of discussion would dissuade him. He hired a contractor and decided to
11 dig up my property and my landscaping to change my connection to the water system that did
12 not need changing and do so at my expense. His crazy activities cost me several hundreds of
13 dollars of attorney's fees, time of argument and my neighbors time and effort to dissuade him
14 from his uninformed and incorrect activities. He never apologized nor offered to pay for
15 my attorney's fees. The attorney he hired worked for the HOA even though at the time the water
16 and sewer system belonged to the NFP.

17 Two of the members of the HOA have to have pumps to have adequate water pressure,
18 showing that he does not have an adequate system nor operate it properly, When the water
19 system goes out he does not notify any of us that the system is off. Therefore, on occasion they
20 have burned out their pumps because there is no water. I believe that these pump failures have
21 cost about \$1,000. This is just an example of how he is not attentive to the people who use the
22 water system.

23 **Q. Any other testimony by Mr. Mills you would like to address?**

1 Yes. Mr. Mills claims that Carriage Oaks is a not-for-profit. Yet, despite being a “non-
2 profit”, Mr. Mills admits to making a profit of \$4,200 per year. He admits that only \$2,250 of the
3 total \$6,450 is for actual costs of the system. He personally pockets the rest. Mr. Mills’ testimony
4 of how the fees for services are calculated is detailed on page 7, lines 6-14, this gives the PSC
5 jurisdiction and requires regulation of the Respondents in this case since he is making a profit.

6 Mr. Mills also testified that he has made multiple attempts to listen to the concerns and
7 demands of Complainants and mentions the August 2017 annual meeting for the Carriage Oaks
8 Homeowners’ Association. Mr. Mills has disregarded Complainants’ concerns each time. And
9 Mr. Mills’ testimony on page 11, lines 4-12, is untrue. We asked him multiple times to transfer
10 *ownership* to a third-party rather than just management and maintenance. Mr. Mills refused.

11 **Q. Can you summarize for us why you have concerns about Mr. Mills’ controlling the**
12 **water and sewer services?**

13 Yes. He is not one who is concerned about the people that receive services and is not
14 service oriented. He will tell DNR, PSC or any agency that he will do what they will require then
15 he will make every attempt to pass on the costs to someone else or find some way to avoid doing
16 what he has said he will do. Let me give you an example, right now there is not a fully qualified
17 test technician in charge of our sewer system. He will say he doesn't have to be because he put in
18 the system and is therefore qualified. He was using as a backup an employee in "his" charity
19 Caring Americans, Jeremy Storment, and Mr. Storment's certificate for waste water expired Dec
20 31, 2017. Neither Mills not Storment are qualified water technicians.

21 The water tank matter attempt to lay off his costs on the members of the HOA is a perfect
22 example of how he has operated the subdivision. It carries through in all aspects. He put in
23 insufficient and inadequate roads, storm water drainage, gates, etc. and is now putting on those

1 of us in the subdivision the costs of what was not done correctly. I do not believe that he will
2 protect the value of my property, provide adequate water and sewer services protect my health
3 and safety nor that of all of us in the subdivision by following the regulations and rules of proper
4 testing and reporting. He does not provide water test reports to the members as a regular matter
5 of business and when asked he makes a statement like “how dare you to question my honesty”,
6 while every day demonstrating that he cannot be trusted.

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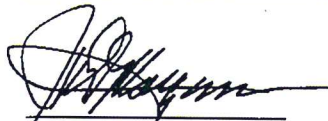
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AFFIDAVIT OF DERALD MORGAN

Derald Morgan, being first duly sworn on his oath, states as follows:

1. My name is Derald Morgan. I am a complainant in the above-referenced matter. I am over 18 years of age and competent to give testimony.
2. Attached hereto and made a part hereof for all purposes is my Sur-Rebuttal Testimony on behalf of Complainants consisting of 6 pages, all of which have been prepared in written form for introduction into evidence in the above-referenced docket.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.



Derald Morgan

Subscribed and sworn to me this 22 day of Jan 2018.



Notary Public

My commission expires: 11/29/2019

