

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



**FILED<sup>2</sup>**

JUL 8 2019

Missouri Public  
Service Commission

Derald Morgan, Rick and Cindy Graver, William  
and Gloria Phipps and David Lott,

Complainants,

v.

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

File No. WC-2017-0037

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**REPORT AND ORDER**

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Issue Date: April 12, 2018

Effective Date: May 14, 2018

Commission Exhibit No. 2

Date 6-24-19 Reporter LMB

File No. WA-2018-0370

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and Gloria Phipps and David Lott, )

Complainants, )

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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 )

**APPEARANCES**

Appearing for the **Complainants:**

**Karl Finkenbinder**, Attorney, 100 Prairie Dunes Dr., Ste. 200, Branson MO 65616-6561,

Appearing for the **Respondents:**

**Bryan Wade**, Attorney, 901 St. Louis St., Suite 1800, Springfield MO 65806,

**Whitney S. Smith**, Attorney, 901 St. Louis St., Suite 1800 Springfield MO 65806,

Appearing for the **Staff of the Missouri Public Service Commission:**

**Jacob Westen**, Deputy Counsel, Governor Office Building, 200 Madison Street,  
Jefferson City, Missouri 65102.<sup>1</sup>

Appearing for the **Office of the Public Counsel:**

**Ryan Smith**, Senior Counsel, Governor Office Building, 200 Madison Street, Suite 650,  
Post Office Box 2230, Jefferson City, Missouri 65102.<sup>2</sup>

**REGULATORY LAW JUDGE:** John T. Clark

<sup>1</sup> EFIS No. 63 (February 2, 2018) *Staff's Motion to be Excused* – Staff counsel requested to be excused from the evidentiary hearing which was granted.

<sup>2</sup> Public Counsel appeared at the evidentiary hearing, where he asked to be excused. The request was granted. Transcript, p. 25.

## REPORT AND ORDER

### I. Procedural History

On August 4, 2016, Derald Morgan, Rick Graver, Cindy Graver, William Phipps, Gloria Phipps, and David Lott ("Complainants") filed a complaint with the Missouri Public Service Commission ("Commission") against Carl Richard Mills, Carriage Oaks Estates Homeowners Association, Distinctive Designs, and Caring Americans Trust Foundation, Inc. (f/k/a Caring Americans Foundation, Inc. ("Respondents"). An amended complaint was filed on August 11, 2016. Complainants alleged primarily that Respondent Carl Mills caused ownership of water and sewer facilities to be transferred to Caring Americans Trust Foundation, Inc. a non-profit corporation not formed as a water and sewer company, of which Complainants are not members and in which they have no say as to control or operation. Complainant's alleged that Caring Americans Trust Foundation, Inc. has not obtained a Certificate of Convenience and Necessity from the Commission.<sup>3</sup>

The complaint was filed in relation to both the water and sewer systems. On August 11, 2016, file numbers WC-2017-0037 and SC-2017-0039 were consolidated under file number WC-2017-0037 because both files address a single complaint.<sup>4</sup> Additionally, both files involved the same complainants and respondents.

Respondents' filed an answer to the amended complaint, stating that Complainants do not have an ownership interest in the water and sewer systems and therefore have no say in the operation or ownership of those systems. Respondents moved to dismiss the

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<sup>3</sup> The information provided in the Complaint also alleged the lack of a valid Operating Permit from the Missouri Department of Natural Resources, but that is outside the jurisdiction of the Commission

<sup>4</sup> EFIS No. 3 (August 11, 2016) *Order of consolidation*

complaint for lack of Commission jurisdiction.<sup>5</sup> An amended motion to dismiss was filed on February 14, 2017.<sup>6</sup> That motion was denied by the Commission August 3, 2017.<sup>7</sup>

Complainants moved to add Carriage Oaks Not-for-Profit Water and Sewer Corporation as a party and respondent on September 14, 2017.<sup>8</sup> The Commission treated this motion as a second amended complaint.<sup>9</sup> Respondents filed a motion to dismiss the second amended complaint on October 24, 2017.<sup>10</sup> Complainants filed a motion for partial summary determination on December 13, 2017.<sup>11</sup> The Commission denied both motions on January 23, 2018.<sup>12</sup>

Because there were material facts in dispute, the Commission held an evidentiary hearing on February 6, 2018, in Jefferson City, Missouri.<sup>13</sup>

## **II. Findings of Fact**

Any finding of fact where it appears the Commission has made a determination between conflicting evidence indicates the Commission attributed greater weight to that evidence, and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

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<sup>5</sup> EFIS No. 10 (September 6, 2016) *Respondents' Motion to Dismiss Complainants' Amended Petition and Entry of Appearance*

<sup>6</sup> EFIS No. 3 (February 14, 2016) *Respondents' Amended Motion to Dismiss*

<sup>7</sup> EFIS No. 34 (August 3, 2017) *Order Denying Motion to Dismiss, Granting Motion to Strike, and Directing Filing of Procedural Schedule*

<sup>8</sup> EFIS No. 37 (September 14, 2017) *Complainants' Motion to Add Carriage Oaks Not-For-Profit Water and Sewer Corporation as a Party*

<sup>9</sup> EFIS No. 40 (October 10, 2017) *Order Deeming Motion an Amended Complaint and Notice of Complaint*

<sup>10</sup> EFIS No. 46 (October 24, 2017) *Respondents' Motion to Dismiss Second Amended Complaint*

<sup>11</sup> EFIS No. 52 (December 13, 2017) *Complainants' Motion for Partial Summary Judgment Against Respondents, Complainants' Statement of Uncontroverted Material Facts, and Complainants' Legal Memorandum in Support of their Motion for Partial Summary Judgment*

<sup>12</sup> EFIS No. 60 (January 23, 2018) *Order Denying Respondents' Motion To Dismiss and Order Denying Complainants' Motion For Partial Summary Determination*

<sup>13</sup> Transcript, Volume 2 (hereinafter, "Tr."), In total, the Commission admitted the testimony of 2 witnesses and received 19 exhibits into evidence. Post-hearing briefs were filed on February 28, 2018, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record. "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

1. The Office of the Public Counsel ("Public Counsel") "may represent and protect the interests of the public in any proceeding before or appeal from the public service commission." Public Counsel "shall have discretion to represent or refrain from representing the public in any proceeding." Public Counsel did not participate in the evidentiary hearing in this matter.

2. The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission. Staff participated as a party in this matter, though Staff was excused from the evidentiary hearing.<sup>14</sup>

3. Complainants are homeowners in the Carriage Oaks Estates subdivision.<sup>15</sup> Under the Declaration of Restrictive Covenants and Easements all lots within the subdivision must receive water and sewer services from Respondent's system.<sup>16</sup>

4. Mills Properties Group LTD is the developer of the subdivision. The sole member of Mills Properties Group is Carl Mills' personal trust. This entity also does business under Distinctive Designs (a fictitious name) in Missouri.<sup>17</sup> Distinctive Designs is a named respondent. Distinctive Designs constructed the subdivision including the water system, sewer system and all mains; the well was not constructed by Distinctive Designs.<sup>18</sup>

5. Carriage Oaks LLC was formed by Carl Mills after his wife's death for the purpose of being able to sell part of his ownership interest in Carriage Oaks Estates.

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<sup>14</sup> EFIS No. 63 (February 2, 2018) *Staff's Motion to be Excused*

<sup>15</sup> Ex. 10, D. Morgan Direct, Page 3

<sup>16</sup> Ex. 14, Declaration of Restrictive Covenants and Easements, Page 6

<sup>17</sup> Tr., Pages 134-135

<sup>18</sup> Tr., Page 123

Carriage Oaks LLC is not a named respondent. Carriage Oaks LLC is owned by Carl Mills' personal trust.<sup>19</sup>

6. Caring Americans Trust Foundation Inc. was established by Carl Mills September 11, 2012, for the purpose of supporting other charitable organizations.<sup>20</sup> Caring Americans Trust Foundation is a named respondent. It was formed as a non-profit, and is not owned by Mr. Mills,<sup>21</sup> although he is on the board.<sup>22</sup> No Complainants are members.<sup>23</sup>

7. Carriage Oaks Not-for-Profit Water and Sewer Corp. was incorporated January 18, 2017.<sup>24</sup> Carriage Oaks Not-for-Profit Water and Sewer Corp. is a named respondent. Membership in the not-for-profit is comprised of all persons who own property that is or will be receiving water and sewer services. Each member is entitled to one vote per membership for the board of directors, though persons may hold multiple membership interests.<sup>25</sup>

8. Carriage Oaks Estates Homeowners Association includes as members any person who owns a lot in the subdivision. Carriage Oaks Homeowners Association is a named respondent. Voting is apportioned by class, with Class A members having one vote per lot owned, and the Class B member (Developer) having ten votes per lot owned.<sup>26</sup>

9. Carriage Oaks Estates is a subdivision in Stone County, Missouri, founded in 2001.<sup>27</sup> Carriage Oaks Estates is being developed in three phases; phase one has eight lots, phase two has an additional 24 lots, and phase three will have an additional 22 lots

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<sup>19</sup> Tr., Pages 75-76

<sup>20</sup> Ex. 24, Page 4

<sup>21</sup> Tr., Page 136

<sup>22</sup> Tr., Page 144

<sup>23</sup> Tr., Page 79

<sup>24</sup> EFIS No. 52 (December 13, 2017) *Complainants' Motion for Partial Summary Judgment Against Respondents, Complainants' Statement of Uncontroverted Material Facts, and Complainants' Legal Memorandum in Support of their Motion for Partial Summary Judgment*, Exhibit E, Articles of Incorporation of Carriage Oaks Not-for-Profit Water and Sewer Corporation

<sup>25</sup> Ex. 15, Page 1

<sup>26</sup> Ex. 14, Declaration of Restrictive Covenants and Easements, Pages 9-10

<sup>27</sup> Ex. 24, C. Mills Rebuttal, Page 5

(ground has not been broken on phase three).<sup>28</sup> Seven homes are currently developed in the subdivision.<sup>29</sup>

10. Carl Richard Mills is the developer of Carriage Oaks Estates. Carl Mills is a named Respondent. His personal trust owns Mills Properties Group LTD, Distinctive Designs LTD, and Carriage Oaks LLC. He is the founder and member of the board of both Caring Americans Trust Foundation Inc. and Carriage Oaks Not-for-Profit Water and Sewer Corp. He is a member of Carriage Oaks Homeowners Association with Class B voting rights. Carl Mills owns approximately 23 lots in the Carriage Oaks Estates subdivision.<sup>30</sup>

11. The water system was initially comprised of a well capable of delivering 55 gallons per minute, five bladder tanks, a well house and four inch PVC water mains.<sup>31</sup> The sewer system is comprised of a treatment plant with a tank, and mains.<sup>32</sup>

12. Only seven lots are developed and connected to the water and sewer system.<sup>33</sup> Sewer mains run through phases one and two, with both phases ready for immediate connection to the sewer system.<sup>34</sup>

13. All homeowners are required to connect to the water and sewer system.<sup>35</sup> All seven developed homes currently receive water service.<sup>36</sup>

14. Mr. Mills has not sought a Certificate of Convenience and Necessity from the Commission for any water or sewer systems.<sup>37</sup>

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<sup>28</sup> Tr., Pages 79-80

<sup>29</sup> Tr., Page 81

<sup>30</sup> Tr., Page 150

<sup>31</sup> Ex. 26, Page 1

<sup>32</sup> Ex. 18, Page 1

<sup>33</sup> Tr., Page 154

<sup>34</sup> Tr., Page 82

<sup>35</sup> Ex. 14, Declaration of Restrictive Covenants and Easements, Page 6

<sup>36</sup> Tr., 154

<sup>37</sup> Tr., Page 78

15. Carl Mills and his wife originally owned the water and sewer assets through his personal trust. Upon his wife's death the water and sewer assets remained with his personal trust until approximately 2007, when Carriage Oaks LLC came into being.<sup>38</sup>

16. Carriage Oaks LLC owned the water and sewer assets from 2007 until they were transferred to Caring Americans Trust Foundation Inc.<sup>39</sup>

17. On April 2, 2016, Carriage Oaks LLC transferred ownership of the water and sewer assets to Caring Americans Trust Foundation Inc.<sup>40</sup>

18. On January 27, 2017 Caring Americans transferred ownership of the water and sewer assets to Carriage Oaks Not-for-Profit Water and Sewer Corporation.<sup>41</sup>

19. Prior to 2014 homeowners were billed (through their annual homeowners assessment) for reimbursement of actual costs,<sup>42</sup> chemicals, and testing for the water and sewer assets, but were not billed for maintenance and management performed by Distinctive Designs.<sup>43</sup>

20. Carl Mills personally issued assessments for services to the Carriage Oaks Estates homeowners from the Carriage Oaks Homeowners Association.<sup>44</sup>

21. Since 2014 Distinctive Designs has charged for maintenance and management of the water and sewer system.<sup>45</sup> Distinctive Designs invoiced the homeowners association for services provided<sup>46</sup> pursuant to a contract between Distinctive Designs and Carriage Oaks LLC,<sup>47</sup> and a contract between Distinctive Designs and the

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<sup>38</sup> Tr., Page 74

<sup>39</sup> Tr., Pages 138-140

<sup>40</sup> Tr., Page 77

<sup>41</sup> Tr., Page 77

<sup>42</sup> Tr., Pages 120-127

<sup>43</sup> Ex. 24, C. Mills Direct, Page 7, also Ex. 11, Carriage Oaks Estates Property Owners Assessments

<sup>44</sup> Ex. 11, Pages 1-6

<sup>45</sup> Tr., Page 91

<sup>46</sup> Ex. 6 and Ex. 18, Invoices for services, also Tr., Page 129

<sup>47</sup> Tr., Page 120



homeowners association.<sup>48</sup> The homeowners association collects the water and sewer assessment used to reimburse Distinctive Designs from its members<sup>49</sup>

### III. Conclusions of Law

A. Complainants bear the burden of proof.<sup>50</sup> The burden of proof is the preponderance of the evidence standard.<sup>51</sup> In order to meet this standard, Complainants must convince the Commission it is “more likely than not” that Respondents violated an applicable statute, rule, or provision of a Commission-approved tariff.<sup>52</sup>

B. The issues for determination are whether the Commission has jurisdiction in this matter, and if so, whether Respondents have violated any state law, Commission rule, or company tariff.

C. The Commission has jurisdiction over this Complaint. Pursuant to Section 386.390, RSMo., “1. Complaint may be made ... by any person ... by petition in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law or of any rule or order or decision of the commission; ...”.

D. Whether the Commission has jurisdiction over Respondents, and when that jurisdiction attached, resolves most of the remaining issues in this matter.

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<sup>48</sup> Tr., Page 125

<sup>49</sup> Ex. 11, and Ex. 18

<sup>50</sup> *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n of State of Mo.*, 116 S.W.3d 680, 693 (Mo. App. 2003).

<sup>51</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

<sup>52</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109-111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

The Commission has jurisdiction over all water corporations<sup>53</sup> and sewer systems<sup>54</sup> Section 386.020(59), RSMo defines a water corporation: "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[.]" Section 386.020(49), RSMo defines a sewer corporation: "Sewer corporation" includes 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[.]

E. Carl Mills owned plant or property for distributing water and for the treatment of sewage. He, through his personal trust, owned the water and sewer system from its construction through 2007 when it was transferred to Carriage Oaks LLC.

F. Carl Mills owned a water and sewer system devoted to the public use. Respondents assert that the Commission lacks jurisdiction over Respondents because the water and sewer system are not operated for the public use. While not listed as a requirement within the applicable statutes, Missouri courts have held that before the Commission has authority over a utility it must be devoted to a public use.<sup>55</sup>

In *Hurricane Deck Holding Co. v. Pub. Serv. Comm'n*, the Western Court of Appeals determined that, "...Hurricane Deck could constitute a "public utility," even though its

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<sup>53</sup> § 386.250(3), RSMo.

<sup>54</sup> § 386.250(4), RSMo.

<sup>55</sup> *State ex rel. M.O. Danciger & Co. v. Pub. Serv. Comm'n*, 275 Mo. 483, 205 S.W. 36, 40 (1918)

services were limited to the two subdivisions in which its water and sewer systems were located, where it offered service indiscriminately to all persons located within that service area.”<sup>56</sup> Respondents cite *Orler v. Folsom Ridge, LLC*, WC-2006-0082 for authority that providing water services to current and future subdivision residents did not amount to being a public utility. *Orler* is distinguishable from *Hurricane Deck* and the present matter because in *Orler* connecting to the water and sewer system was both optional for individuals within an area and was offered only to individuals in that area who became members of the Big Island Homeowners Association (a discrete group of people).<sup>57</sup>

Here, all residents of Carriage Oaks Estates must be members of the Carriage Oaks Homeowners Association, and all residents must connect to the water and sewer system. Additionally, no evidence or testimony was introduced at the evidentiary hearing indicating water or sewer service was refused to any residents of the Carriage Oaks Estates subdivision. Therefore the water and sewer system owned by Carl Mills were devoted to the public use.

G. Carl Mills owned a utility operating for gain. Respondents also assert that the Commission lacks jurisdiction over Respondents because they are not operating a water or sewer system for gain. The definitions found at 386.020(49), RSMo and 386.020(59), RSMo require that utility services are being offered for gain. Respondents equate gain with making money or profit. Carl Mills stated multiple times at the evidentiary hearing that the water and sewer system had been provided for 14 years for free.<sup>58</sup> He testified that prior to 2014 the only expenses charged to homeowners were for chemicals and testing related to

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<sup>56</sup> *Hurricane Deck Holding Co. v. PSC*, 289 S.W.3d 260, 266 (Mo. App., W.D. 2009)

<sup>57</sup> *Orler v. Folsom Ridge, LLC*, Report and Order, 16 Mo. P.S.C. 3d 28, 2007, Page 74

<sup>58</sup> Tr., Pages 89, 90, 93

the water and sewer system. Respondents' argument, from Mr. Mills' testimony, is that they did not make a profit, and in fact operated at a loss.<sup>59</sup>

Providing water and sewer services for gain has been interpreted by the courts to mean providing water and sewer services for compensation.<sup>60</sup> The utility does not even need to receive compensation, issuing the bill is sufficient.<sup>61</sup> *Hurricane Deck* addresses the potentiality of operating at a loss:

"...Hurricane Deck seeks — a legal rule exempting entities from PSC regulation unless and until the PSC first determined that the entity's "collections . . . are in excess of the expenditures necessary to operation of those systems."<sup>62</sup>

The court found such a determination would be inconsistent with the overriding purpose of public utility regulatory laws. Therefore, because Carl Mills issued assessments to the homeowners for water and sewer services he was operating for gain.

H. Carl Mills is a person who owns a utility devoted to the public use, and operated for gain. Therefore, Carl Mills is a water corporation as defined by Section 386.020(59) RSMo. and is subject to the Commission's jurisdiction.

I. The Commission has no jurisdiction over the sewer system. Section 386.020(49) RSMo creates an exemption to the definition of sewer corporation. It states that, "except that the term shall not include sewer systems with fewer than twenty-five outlets[.]" Commission Rule 4 CSR 240-60.010(3)(K), defines (sewer) outlet as a service sewer connection to the collecting sewer. Commission Rule 4 CSR 240-60.010(3)(E), defines service sewers to customers as any sewer pipe extending from the customer's residence or other structure to the utility's collecting sewer. Commission Rule 4 CSR 240-

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<sup>59</sup> Tr., Pages 122-124

<sup>60</sup> *Hurricane Deck Holding Co. v. PSC*, 289 S.W.3d 260, 267 (Mo. App., W.D. 2009)

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 268

60.010(3)(D), defines collecting sewers as sewers, including force lines, gravity sewers, interceptors, laterals, trunk sewers, manholes, lamp holes and necessary appurtenances, including service wyes.

Seven lots are currently developed with houses in phase one.<sup>63</sup> Carl Mills testified that phase one and two are ready for immediate connection to the water and sewer system.<sup>64</sup> He also testified that there are sewer mains that run through phase one and two.<sup>65</sup> "Service sewers to customers" would be the line running from the sewer main to the house. No evidence was presented regarding the existence of those lines absent a house.

Additionally the Declaration of Restrictive Covenants and Easements states that, "[p]rior to utilizing the wastewater central collection and treatment facility, all property owners shall have installed an approved "on-site" plumbing system to transfer all wastewater generated by the subject property to the collection and treatment facility."<sup>66</sup> Without a service sewer line there is no "service sewer connection to the collecting sewer." Under that analysis there are seven sewer outlets, and the sewer system is outside the Commissions jurisdiction.

J. Carl Mills did not seek the Commission's approval before transferring the water assets. Carl Mills transferred the water and sewer assets several times and for various purposes. The first transfer was from his personal trust to Carriage Oaks LLC. That transfer was done so that he might sell ownership interest in the subdivision. Having established that Carl Mills was under the jurisdiction of the Commission at the time he was providing water services to the subdivision for compensation; the Commission's approval

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<sup>63</sup> Tr., Page 30

<sup>64</sup> Tr., Page 82

<sup>65</sup> Tr., Page 82

<sup>66</sup> Ex. 14, Page 6

was required before the water assets could have been transferred or sold pursuant to Section 393.190.1, RSMo.

K. The controlling statute, 393.190(1), RSMo states:

No... water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage, or otherwise dispose of ... the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public... without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void.

Because Mr. Mills did not seek Commission approval before transferring the water assets to Carriage Oaks LLC, that transfer is void. Any subsequent transfer of water assets without Commission approval would be void as well.

L. Section 393.170(2), RSMo states:

No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under an franchise heretofore granted but not heretofore actually exercised ... without first having obtained the permission and approval of the commission.

A Certificate of Convenience and Necessity is a mandate to provide service to the area covered by it.<sup>67</sup> Because Carl Mills falls under the Commission's jurisdiction as a water corporation he needs a certificate from the commission before he can lawfully provide water services to customers within the Carriage Oaks Estates subdivision.

#### **IV. Discussion**

Carl Mills established the Carriage Oaks Estates subdivision in 2001. His company Distinctive Designs constructed the subdivision and water and sewer system with the exception of the well. The water and sewer assets were owned by his personal trust which

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<sup>67</sup> *State ex rel. Harline v. Pub. Serv. Comm'n of Mo.*, 343 S.W.2d 177 (Mo. Ct. App. 1960).

he controlled. Entities within his ownership, management, and control provided water and sewer services to the houses in the subdivision. The Declaration of Restrictive Covenants and Easements for Carriage Oaks Estates authorized Mr. Mills to transfer or sell the water and sewer assets without any approval from the homeowners association. His substantial voting power within the homeowners association meant that he could manage the water and sewer assets unchecked. Respondents have pointed out that the homeowners were all subject to the Declaration of Restrictive Covenants and Easements, and association bylaws upon purchasing their properties. This incorrectly assumes that the homeowners can contract away regulatory requirements through the agreement of private parties.

The record does not demonstrate any abuse by Carl Mills in regard to rates or safety. Carl Mills developed a subdivision and provided water and sewer services to the subdivision. He offered these services at cost for a period of time and appeared to provide safe service to the subdivision. What brings him within the Commission's jurisdiction for regulation is the fact that water corporations are required to obtain a certificate of convenience and necessity to provide water service to customers. The protections afforded the community by regulation are not just from actual abuse, but from potential abuse. Carl Mills started serving customers under an initial structure that should have been regulated so no service or transfers can occur without Commission approval.

Complainants allege that they have no say in the operation or management of the water or sewer system. Complainants ask that the water system and sewer system be placed with an entity where they have input in how the systems are managed. The Commission has no power to remove the water assets from their current owner, and it has no jurisdiction over the sewer system; this relief the Complainants request cannot be granted. However, in regard to the water system Respondents have engaged in a regulated

activity and are subject to the statutes governing that activity as well as the consequences for failing to comply with applicable statutes.

#### **V. Decision**

In making this decision, the Commission considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Carl Mills is a water corporation within the definition of 386.020(59) RSMo, and as such is subject to Commission jurisdiction.

Carl Mills' transfer of water assets to Carriage Oaks LLC, and any subsequent transfers are void under Section 393.190(1), RSMo.

Carl Mills does not have a Certificate of Convenience and Necessity to provide water for distribution within the state of Missouri. Carl Mills must apply for a Certificate of Convenience and Necessity to continue to operate that water system.

Complainants have failed to show by a preponderance of the evidence that there are more than 25 sewer outlets in the Carriage Oaks Estates subdivision. Therefore, Respondents are not a sewer corporation within the definition of Section 386.020(49) RSMo., and are currently outside the Commission's jurisdiction.

#### **THE COMMISSION ORDERS THAT:**

1. Any transfers of water assets made without Missouri Public Service Commission approval are void.
2. Carl Mills shall apply to the Missouri Public Service Commission for a Certificate of Convenience and Necessity.
3. Upon obtaining a Certificate of Convenience and Necessity, Carl Mills shall initiate a rate case with the Missouri Public Service Commission.



4. This order shall be effective May 14, 2018.



BY THE COMMISSION

*Morris L. Woodruff*

Morris L. Woodruff  
Secretary

Hall, Chm., Kenney, Rupp, Coleman, and  
Silvey, CC., concur.

Clark, Regulatory Law Judge