

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

In the Matter of Carl Richard Mills' Request            )  
to Maintain Water System Rate                            )

**File No. WR-2021-0177**

**STAFF RESPONSE**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through the undersigned counsel, and respectfully files the following *Staff Response* consistent with the Commission’s Order issued on April 9, 2021:

**History**

1. On August 4, 2016, a group of residents of the Carriage Oaks Estates subdivision, located in Stone County, Missouri filed a Complaint with the Commission in File No. WC-2017-0037 against the subdivision’s developer, Carl Richard Mills; the subdivision’s homeowners association (“HOA”); and several entities created by Carl Richard Mills. The Complaint alleged that Mr. Mills operated a public utility subject to the Commission’s jurisdiction without having obtained a Certificate of Convenience and Necessity (“CCN”) and further alleged that Mr. Mills transferred, without Commission approval, the subdivision’s water assets to various entities owned or controlled by Mr. Mills.

2. In its *Report and Order* in File No. WC-2017-0037, issued on April 12, 2018, and effective on May 14, 2018, the Commission determined that the Carl Richard Mills system was a water corporation within the definition of Section 386.020(59) RSMo.,<sup>1</sup> and

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<sup>1</sup> Section 386.020(49) RSMo. defines “**Sewer corporation**” 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**). The definition for “Water corporation” in Section 386.020(59), RSMo. does not contain the same limitation that systems with fewer than twenty-five outlets are not considered water corporations. Thus, even with the finding in its Report and Order issued in File No. WA-2018-0370 that only seven homes are connected to the Carl Richard Mills water system, the Commission still determined the water system was a Water corporation as defined in Section 386.020(59) RSMo.

further determined that any transfers of the water assets were void and Mr. Mills retained ownership of the water assets. In that same *Report and Order*, the Commission ordered Mr. Mills to apply for a CCN.

3. On June 7, 2018, in File No. WA-2018-0370, Carl Richard Mills filed an Application for a CCN to install, own, acquire, construct, operate, control, manage and maintain the water system in the Carriage Oaks Estates subdivision. In its *Report and Order* issued on October 9, 2019, with an effective date of November 8, 2019, the Commission granted Carl Richard Mills a CCN, subject to several conditions.

4. On June 1, 2020, in File No. WM-2020-0387, Carl Richard Mills filed an Application in which Mr. Mills stated the purpose of the Application was “to GIFT the water utilities To Carriage Oaks Estates Homeowners Association”. Mr. Mills also stated in this Application that “[t]he homeowners at Carriage Oaks Estates has agreed to accept the GIFT of the water system which Mr. Carl R. Mills is extending to them.” On June 9, 2020, Mr. Mills filed an amendment to his Application in which Mr. Mills stated that he was “aware that there are certain State of Missouri regulations regarding the Association By-Laws that [he] will remedy” and included with his amendment a proposed addition to the HOA by-laws to “specifically address the Water System and its management”. On July 31, 2020, an Entry of Appearance was filed by attorneys Larissa M. Whittingham and Bryan O. Wade who stated their appearance was on behalf of Carl Richard Mills in File No. WM-2020-0387. On that same day, Mr. Mills’ counsel filed a Notice of Dismissal in File No. WM-2020-0387 and stated that Mr. Mills was voluntarily dismissing his request for a Transfer of Assets.

5. On December 21, 2020, Carl Richard Mills filed a letter that initiated this current case (File No. WR-2021-0177), pursuant to the Commission Rule 20 CSR 4240-10.075 Staff Assisted Rate Case Procedure. Pursuant to a condition in the *Report and Order* granting a CCN to Mr. Mills in File No. WA-2018-0370, Mr. Mills was ordered to submit a rate case one year after the effective date of the issuance of the CCN.

On December 30, 2020, Staff filed the Small Utility Rate Case Timeline and Staff has commenced its audit and investigation in the case. A Public Hearing conducted via WebEx was held in this matter on February 2, 2021, and one customer of the Carl Richard Mills system was granted intervention in this case on March 23, 2021.

#### **Staff Response to Mills' April 6, 2021 Pleading**

6. On April 6, 2021, Carl Richard Mills made a filing in this current case (File No. WR-2021-0177) that Mr. Mills captioned as *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 or PSC-approved 3<sup>rd</sup> party* ("April 6, 2021 Pleading"). Mr. Mills stated in his April 6, 2021 Pleading that he wishes to renew his request to be able to gift the water system to the Carriage Oaks Estates HOA and also stated that he requests authority to have the option to divest of the water system to a PSC-approved commercial third party organization in case some HOA members intervene with the transfer of the gift.

7. Based on Staff's review of Mr. Mills' April 6, 2021 Pleading, Mr. Mills' filing does not satisfy the requirements of Commission Rule 20 CSR 4240-2.060 Applications,<sup>2</sup>

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<sup>2</sup> At the time of this filing, Mr. Mills has not requested a waiver or variance from any of requirements of 20 CSR 4240-2.060.

and more specifically, Mr. Mills' April 6, 2021 Pleading does not satisfy the criteria necessary for a transfer to the HOA. Mr. Mills is correct that pursuant to Section 393.190.1., RSMo., Mr. Mills must seek Commission approval prior to transferring the water system; however, Mr. Mills' April 6, 2021 Pleading does not properly request approval, as highlighted below.

Requests to Transfer to HOAs

8. In an Order issued by the Commission on July 7, 1993, in File No. WD-93-307, the Commission cited a Staff Memorandum that set forth the following criteria a property or homeowners association must meet for recognition as a legitimate association operating a utility strictly for the use of its own members:

- I. It must have as membership all of its utility customers, and operate the utility only for the benefit of its members;
- II. It must base the voting rights regarding utility matters on whether or not a person is a customer, as opposed to, allowing (1) vote per lot which would not be an equitable situation if one (1) person owned a majority of lots irrespective of whether each of those lots subscribed to the utility service; and
- III. It must own or lease the utility system so that it has complete control over it.

From the copies of the by-laws and proposed amendments to the by-laws Mr. Mills provided in File No. WM-2020-0387 and the statement Mr. Mills made in his April 6, 2021 Pleading that the "majority of the HOA members, including myself, have agreed to amend the by-laws to permit one vote for each sold lot for the water system", the Carriage Oaks

Estates HOA does not meet criteria II. If Mr. Mills wishes to pursue transferring the water system to the Carriage Oaks Estates HOA, Staff would suggest Mr. Mills first pursue amending the Carriage Oaks Estates HOA by-laws to be structured so that **in regard to matters of the water system, the voting structure is one (1) vote per utility customer**, and not one (1) vote per lot owner. Once that voting structure is in place for utility matters, Mr. Mills could proceed with filing an application requesting approval to transfer the assets, consistent with Commission rules.

Requests to Transfer, Divest, Sell to third parties

9. Mr. Mills characterizes his wish to have authority to sell or divest the water system in his April 6, 2021 Pleading as an “option” in the event one or more HOA members would intervene with the transfer of the gift. Mr. Mills does not state a third party upon whom he wishes to sell or divest the water system to. Further, Mr. Mills requests this authority as an option he would only pursue if transfer to the HOA was impeded. If Mr. Mills decides to pursue transferring, divesting, or selling the water system, Staff suggests Mr. Mills first identify a third party that would be the recipient of such transfer, divestiture or sale and then Mr. Mills may file an application to transfer the assets, consistent with Commission rules.

**Status of Above-Captioned Rate Case**

10. The above-captioned rate case has proceeded consistent with the Small Utility Rate Case Timeline that was filed by Staff on December 30, 2020. At the time of this filing, the Parties to the case are approaching the Day 120 Date (April 20, 2021) upon which Staff’s settlement proposal will be sent to all Parties, and subsequently Staff will coordinate a meeting to discuss the settlement proposal and

pursuant to 20 CSR 4240-10.075(10), Staff or one of the other Parties may ultimately request that the assigned Judge meet with the Parties and mediate discussions to assist in reaching a partial, or full, agreement.<sup>3</sup>

11. At this time, Staff suggests the above-captioned rate case continue to progress consistent with the Small Utility Rate Case Timeline.

**WHEREFORE**, Staff requests the Commission accept this *Staff Response* for the Commission's information and consideration, and grant any such relief as is just under the circumstances.

Respectfully Submitted,

**/s/ Jamie S. Myers**

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand delivered, transmitted by facsimile or electronically mailed to all parties and/or their counsel of record this 16<sup>th</sup> day of April, 2021.

**/s/ Jamie S. Myers**

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<sup>3</sup> 20 CSR 4240-10.075(10).