

Exhibit No.:
Issues: Transfer of Water and Sewer System
Witness: Derald Morgan
Sponsoring Party: Complainants
Type of Exhibit: Direct Testimony
Case No. WC-2017-0345
Date Prepared: December 28, 2017

**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.)

DIRECT TESTIMONY OF DERALD MORGAN ON BEHALF OF COMPLAINANTS

**Branson, Missouri
December, 2017**

TABLE OF CONTENTS

I. INTRODUCTION AND WITNESS QUALIFICATIONS.....3

II. CARRIAGE OAKS ISSUES.....4

1
2
3
4 **DIRECT TESTIMONY OF DERALD MORGAN**
5

6 **I. Introduction and Qualifications**
7

8 **Q. Please state your name.**

9 My name is Derald Morgan.

10 **Q. Please summarize your professional experience and educational background.**

11 I hold the following degrees: PhD in Engineering from Arizona State University; Master of Science in
12 Electrical Engineering from Missouri Science and Technology and a Bachelor of Science in Electrical
13 Engineering and Business from Louisiana Tech University. I currently work as a forensic engineer
14 throughout the United States. I am a licensed engineer in 5 states, including Missouri, and have
15 testified on several occasions before Public Service Commissions, including in Missouri. I was a
16 Professor and University Administrator for 46 years, 19 Of which were at Missouri Science and
17 Technology. I held 2 Professor Distinguished Chairs at Rolla and was head of Electrical and Computer
18 Engineering, Dean of Engineering at New Mexico State University and Vice President at University of
19 Alabama in Huntsville retiring as Special Assistant to the Chancellor of the University of Alabama.

20 **Q. Where do you currently live?**

21 I live at 108 Carriage Oaks Drive, Reeds Springs, Missouri.

22 **Q. Do you know the other Complainants in this case?**

23 Yes.

24 **Q. How do you know them?**

25 They are my neighbors in the Carriage Oaks Estates subdivision.

26 **Q. What are there names?**

27 Rick and Cindy Graver, William and Gloria Phipps, and David Lott.

28 **Q. Where do those Complainants live?**

29 They live in the Carriage Oaks Estates subdivision.

30 **Q. How long have you lived there?**

31 I've lived there 8 years.

1 **Q. Are you and the other complainants in this case lot owners within the Carriage Oaks Estates**
2 **Subdivision?**

3 Yes.

4 **II. Carriage Oaks Issues**

5 **Q. Is Carriage Oaks Subdivision subject to certain restrictions and covenants?**

6 Yes.

7 **Q. Are you familiar with the Respondents in this case?**

8 Yes.

9 **Q. Can you describe the relationship between the Respondents in this case?**

10 Carriage Oaks, LLC is the developer of the Carriage Oaks Estate subdivision. Carl Mills is a member of
11 Carriage Oaks, LLC. From 2000 to April 2, 2016, Carriage Oaks, LLC owned, operated and maintained the water and
12 sewer systems located at Carriage Oaks Estates subdivision. In April 2016, Carriage Oaks, LLC transferred the water
13 and sewer system to Caring Americans Trust Foundation, Inc. Caring Americans Trust Foundation, Inc. is a non-profit
14 corporation created by Carl Mills. Carl Mills is also on the board of directors for that organization. In January 2017,
15 Caring Americans transferred ownership of the water and sewer system to Carriage Oaks Not for Profit Water and
16 Sewer Corporation.

17 **Q. What entity currently provides water and sewer services to the lot owners in the Carriage Oaks**
18 **Estates subdivision?**

19 Currently, water and sewer services are provided by Carriage Oaks Not for Profit Water and Sewer
20 Corporation.

21 **Q. Do the lot owners have control over the operation and maintenance of the water and sewer system?**

22 None of the complainants in this case are members of Carriage Oak Not for Profits, nor do they have any
23 control or authority over Carriage Oaks Not for Profit or influence over the operation and maintenance of the water
24 and sewer system.

25 **Q. Are the lot owners members of the Carriage Oaks Estates Homeowners' Association?**

26 Yes.

27 **Q. What is Carriage Oaks Estates Homeowners' Association?**

1 Carriage Oaks Estates Homeowners Association is the homeowners' association for Carriage Oaks Estates,
2 in which all owners in Carriage Oaks Estates subdivision are members.

3 **Q. Is Carriage Oaks Estates Homeowners' Association controlled by the lot owners?**

4 No. Respondent Carl Mills controls the majority voting interest in the Association by way of his position as
5 developer, and runs the Association as he sees fit.

6 **Q. Are you familiar with how decisions are made with regard to the operation and maintenance of the**
7 **water and sewer system that serves the lot owners in Carriage Oaks Estates Subdivision?**

8 All decisions as to what maintenance and repair work are done to the water and sewer systems are made by
9 Carl Mills, and all decisions as to payments to Carriage Oaks are made by Carl Mills, via the Association.

10 **Q. How are water and sewer rates determined for the subdivision?**

11 Each year, the owners in Carriage Oaks Estates subdivision pay an assessment to the Carriage Oaks Estates
12 Homeowners' Association, which, in the past Mills has used to reimburse his entities for all costs and expenses related
13 to the water and sewer system. In addition, in the past, Carriage Oaks, LLC has paid itself a fee every year for the so-
14 called "services" it provides to the Association in maintaining and operating the water and sewer system. Thus, the
15 homeowners' association bears all of the expenses and costs associated with the water and sewer system, and then is
16 forced to pay Respondents a fee for its services.

17 **Q. Can you explain why you and the other Complainants in this case decided to file this action?**

18 In or around mid-2016, Carriage Oaks purportedly transferred ownership of the water and sewer systems to
19 Caring Americans Trust Foundation, Inc. (hereinafter "Caring Americans"), a Missouri non-profit corporation also
20 under the control of Carl Mills. Like Carriage Oaks, none of the owners at Carriage Oaks Estates subdivision are
21 members of this non-profit corporation, nor do they have any control or authority over the non-profit corporation.
22 Complainants, through their counsel, sent multiple requests to Carl Mills asking that he transfer ownership of the
23 water and sewer systems to either the Association or a new non-profit corporation in which all of the owners were
24 members. Complainants repeated requests were ignored, and they were left with no choice but to file their Complaint
25 with PSC. We're concerned because we have no influence over the manner in which the water and sewer system is
26 run and Respondents claim they are not subject to the jurisdiction of the Public Service Commission. We are
27 essentially at the mercy of Respondents.

1 **Q. Are the members of the Carriage Oaks Estates Homeowners' Association members of the Carriage**
2 **Oaks Not-for-Profit Water and Sewer Corporation?**

3 No.

4 **Q. Do the lot owners like yourself and the other complainants have control or influence over the**
5 **operation and maintenance of the water and sewer system?**

6 No.

7 **Q To your knowledge, did Respondents obtain a certificate of necessity from the Public Service**
8 **Commission prior to the transfer of ownership of the water and sewer system?**

9 Not to my knowledge.

10 **Q. Do you know if the Not-fot-profit has bylaws?**

11 Yes.

12 **Q. Have you reviewed those bylaws?**

13 Yes.

14 **Q. Is Exhibit 1 a true and accurate copy of those bylaws?**

15 Yes.

16 **Q. Under theses bylaws, would Carl Mills or an entity associated with him be able to control the**
17 **operation of the Not-fot-Profit?**

18 Yes. Article II, Section 2 of the Bylaws violate the "one member, one vote" requirement by allowing
19 members to hold "more than one Membership Interest." Because Respondents would hold more than one
20 Membership Interest, they would be entitled to multiple votes on any particular matter. Likewise, the Bylaws allow
21 prospective utility consumers to be members.

22 **Q. Why do you have concerns about Carl Mills or an entity under his control controlling the operation**
23 **of the Not-fot-Profit and thus the water and sewer system?**

24 If neither the homeowners who receive water and sewer service nor the Public Service Commission has a
25 means for influencing or regulating the rates and operation of the water and sewer system, Carl Mills will be able to
26 set whatever rates he wishes. The homeowners who pay for and receive the water and sewer services will have no way
27 of ensuring that they receive safe and reliable services at a reasonable rate. They would have no recourse whatsoever
28 and no protection.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52

Q. What relief are you and the other Complainants requesting in this case?

We would like Respondents to be ordered to transfer the ownership of water and sewer system to a proper entity in accord with the laws of Missouri in which all homeowners that currently receive water and sewer service are members of said entity and each member receives one vote.

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.

AFFIDAVIT OF DERALD MORGAN

OKLAHOMA
STATE OF MISSOURI)
COLUMBIA) ~~§§~~
COUNTY OF TANEY)

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 Direct Testimony on behalf of Complainants consisting of 7 pages and Exhibit 1, 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.

[Signature]
Derald Morgan

Subscribed and sworn to me this 28 day of December, 2017.

[Signature]
Notary Public

My commission expires: 11-29-2019

