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DIRECT TESTIMONY OF DERALD MORGAN

I. INTRODUCTION AND WITNESS QUALIFICATIONS

Q. Please state your name.

My name is Dr. John Derald Morgan.

Q. Please summarize your professional experience and educational background.

I hold the following degrees from Arizona State University PhD, Missouri Science and Technology MS and Louisiana Tech University BS all in the field of Electrical Engineering. I am a Licensed Professional Engineer in 4 states including Missouri I have testified on several occasions before Public Service Commissions including Missouri. I was a professor and administrator in Universities for 46 years including 19 at MS&T where I was head of Electrical and Computer Engineering and held 2 chaired Professorships. I currently practice engineering as a forensic engineer with engagements throughout the United States. I was Dean of Engineering at New Mexico State University, Vice President at University of Alabama in Huntsville and Special Assistant to the Chancellor of the University of Alabama.

Q. Where do you currently live?

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

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

Yes.

Q. How do you know them?

They are my neighbors in the Carriage Oaks Estates subdivision.

Q. What are their names?

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

Q. Where do those Complainants live?

They live in the Carriage Oaks Estates subdivision.

Q. How long have you lived there?

1 I've lived there 9 years.

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

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

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

21 Currently, water and sewer services are provided by Carriage Oaks Not for Profit Water
22 and Sewer Corporation to the best of our knowledge. Mr. Miles has personally filed a petition for
23 a Certificate of Convenience for the operation of the Water System following the order of the
24 commission that voided all the prior transfers of the Water system but did not address the issue of
25 the Sewer system. Based on filings in the county of Stone the deed of trust of the Water system

1 still resides with the Not for Profit Water and Sewer System established by Mr. Mills without
2 concurrence of any the petitioners to be a party to or a member of the Not for Profit as we believe
3 Missouri Law requires. According to Mr. Mill's petition to the PSC he states that the Water System
4 is owned by Mills Trust then amends the application to state it is owned by him or one of his
5 entities.

6 *"2. Mr. Mills, through one of his wholly owned entities, is the developer of Carriage Oaks*
7 *Estates.*

8 *Pursuant to the Commission's order in Morgan, Mills is the current owner of the water*
9 *system which*

10 *services Carriage Oaks Estates. Additionally, pursuant to the order in Morgan, the*
11 *Commission*

12 *determined that Mills operates a water company through its ownership of the water system*
13 *servicing*

14 *Carriage Oaks Estates"*

15 The commission should deny his petition solely on the fact alone that he cannot
16 definitively state ownership or show a legal document that defines the ownership.

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

19 None of the complainants in this case are members of Carriage Oak Not for Profits, nor
20 do they have any control or authority over Carriage Oaks Not for Profit, or who it is determined is
21 the owner, or influence over the operation and maintenance of the water and sewer system.

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

24 Yes.

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

1 Carriage Oaks Estates Homeowners Association is the homeowners' association for
2 Carriage Oaks Estates, 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
5 of his position as developer and runs the Association as he sees fit.

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

9 All decisions as to what maintenance and repair work are done to the water and sewer
10 systems are made by Carl Mills, and all decisions as to payments to Carriage Oaks are made by
11 Carl Mills, via the Association. Members of the HOA have repeatedly asked for tests of the water
12 in the system and as of this date have never received any testing information as it relates to the
13 safety of the water. The recent budget indicated that there are budgeted funds for testing of water,
14 but the actual expenditure sheets show no expenditures for drinking water testing. The
15 expenditures are to a company for testing the sewer treatment affluent.

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

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

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

1 In or around mid-2016, Carriage Oaks purportedly transferred ownership of the water and
2 sewer systems to Caring Americans Trust Foundation, Inc. (hereinafter “Caring Americans”), a
3 Missouri non-profit corporation also under the control of Carl Mills. Like Carriage Oaks, none of
4 the owners at Carriage Oaks Estates subdivision are members of this non-profit corporation, nor
5 do they have any control or authority over the non-profit corporation. The not for profit had no
6 expertise or charter to own and operate a water and sewer system. Complainants, through their
7 counsel, sent multiple requests to Carl Mills asking that he transfer ownership of the water and
8 sewer systems to either the Association or a new non-profit corporation in which all the owners
9 were members. Complainants repeated requests were ignored, and they were left with no choice
10 but to file their Complaint with PSC. We’re concerned because we have no influence over the way
11 the water and sewer system are run, and Respondents claim they are not subject to the jurisdiction
12 of the Public Service Commission. We are essentially at the mercy of Respondents. The specific
13 issues of safety, public good and failure to provide good service will be addressed in a later section
14 of this testimony.

15 **Q. Are the members of the Carriage Oaks Estates Homeowners’ Association**
16 **members of the Carriage Oaks Not-for-Profit Water and Sewer Corporation?**

17 No.

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

20 No.

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

23 Not to our knowledge. We do know that he has recently asked for a Certificate of Convenience
24 and Necessity and that the PSC staff has recommended it be granted. It is our opinion that based

1 on the commissions order, the failure to transfer the water system to himself by deed of trust places
2 him in violation of the order and is currently illegally operating the water system.

3 **Q. Do you know if the Not-for-profit has bylaws?**

4 Yes.

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

6 Yes.

7 **Q. Is Exhibit A a true and accurate copy of those bylaws?**

8 Yes.

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

11 Yes. Article II, Section 2 of the Bylaws violate the “one member, one vote” requirement
12 by allowing members to hold “more than one Membership Interest.” Because Respondents
13 would hold more than one Membership Interest, they would be entitled to multiple votes on any
14 matter. Likewise, the Bylaws allow prospective utility consumers to be members.

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

17 If neither the lot owners nor the Public Service Commission has a means for influencing
18 or regulating the rates and operation of the water and sewer system, Carl Mills will be able to set
19 whatever rates he wishes. The lot owners who pay for and receive the water and sewer services
20 will have no way of ensuring that they receive safe and reliable services at a reasonable rate.

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

22 We would like Respondents to be ordered to transfer the ownership of water and sewer
23 system to a proper entity in which all owners are members of said entity and each member receives
24 one vote. Missouri Law has very clear and specific laws that relate to this matter. Mr. Mills under
25 advice of his attorney has chosen to violate and attempt to circumvent this very clear and specific

1 law. Since Mills is operating the water system illegally, we would recommend that the commission
2 place the water system in receivership with a qualified water operator until such time as the issues
3 of ownership, safe operation, quality service and price can be determined.

4 **III. OPPOSTION TO THE PROPOSED CERTIFICATE OF CONVENIENCE**

5

6 **Q. Is Mr. Mills Qualified to Operate the Water System Efficiently, Effective and** 7 **Safely**

8 It is our opinion that he is not qualified by training nor experience to operate the water
9 system based on our knowledge and experience. We know of no training or certification of
10 knowledge of water testing or system operation that he has received or courses that he has
11 attended and passed.

12 The water pressure is so poor in parts of the system that 2 owners have had to install and
13 operate additional pressure tanks to assure that they have adequate pressure and flow for daily
14 use. Both have had their pumps burn out because he has turned off the water without their
15 knowledge or notification and the pumps continued to try to pump and burned up. Note the DNR
16 permit does not allow for this but it was essential as the system is inadequate.

17 After turning off the water Mr. Mills does not chlorinate the lines and flush them to the
18 knowledge of the users. If he did, he would have to notify users that a high level of chlorine will
19 be in the lines for a time while he flushes out the lines and purifies the lines. When asked about
20 the matter of flushing and chlorinating the lines he responds in a manner of what do we think he
21 doesn't know what he is doing. The answer to that question is yea.

22 The issue just mentioned is one that is a problem with the users. Mills removes service
23 without notice of his removing service. It has cost 2 homeowners about \$500 to \$1,000 to replace
24 the pressure pumps and system when he turned off the water without notification. Others have
25 been soaped up in the shower and been left without water.

1 Other owners have high water pressure but low flow falling well below the acceptable
2 standard of 2 gallons per minute at each and all faucets. While we realize the PSC only has a
3 standard for pressure, water flow is an also important measure of a properly operated water
4 system. There must be a blockage or reducer in the system that limits flow.

5 One member is so concerned with the quality of water that he has installed and operated a
6 filtration system, a carbon filter and an ultraviolet illumination system at great additional cost.

7 Mr. Mills attempted to dig up a homeowner's lot and remove vegetation important to
8 erosion control because he erroneously believed that the homeowner had improperly installed the
9 meter loop and valving. This homeowner had to hire legal counsel to stop the contract he let for
10 this activity. This is a showing of his inability to recognize a simple piping issue and acting on
11 his own creating conflict and potential property damage.

12 Mr. Mills has not followed the design built that he proposed to the DNR and the one that
13 they approved. For example, he installed a large tank, one much larger that approved by DNR in
14 his application, that he tried to get the homeowners to pay for. The tank is so large that with only
15 7 users, 3 of which are occasional occupants, the water in the tank will not be depleted during
16 certain times of usage before the chlorine levels will fall below those required for proper safe
17 water treatment. He will claim that he only uses a portion of the tank and that because of that he
18 can meet this safety requirement. He cannot show that this is the case, since he has never shared
19 any test data, showing that he monitors this aspect of the safety on a regular basis. This although
20 he charges a large fee for the management of the water system.

21 When the system was first put into service with the large tank and new pumps installed.
22 Members observed that the chlorination mechanism did not have a source of chlorine for
23 chlorinating the water properly. When this was called to his attention the result was that he put a
24 lock on the box that contains the chlorination system. To this day no one knows if the
25 chlorination system is operational and providing appropriate and tested amounts of chlorination.

1 Mr. Mills has inflated and provided erroneous information to the PSC staff as regards to
2 cost of operation. For example, he indicated a major item of cost for bush hogging around the
3 water system, there has never been any bush hogging around the well tank and well house and
4 never will be based on the terrain.

5 Mr. Mills is unable to produce valid documented spread sheets of costs and expenditures.
6 He never provides at HOA meetings invoices and documentation for the amounts in his spread
7 sheets that are prepared by others who also do not check the documentation.

8 Mr. Mills in his filing before the PSC has taken credit for the cost of the water tank
9 installed in 2015. At the previous hearing he told the commission and provided evidence that the
10 not for profit paid for the tank. This is spite of his attempts to get the homeowners to pay for the
11 tank and pumps and showing a previous invoice to him personally. The commission should deny
12 these costs of the system installation since they were a donation to the system by a not for profit.

13 There is excessive iron in the water and Mills fails to regularly blow out the system to
14 clear the sedimentation. He has said he doesn't like to do it because one time he tried something
15 failed. We believe this is a showing of his inability to know and operate a system properly.

16 There are large pieces of gravel captured in almost everyone's home filters. They are
17 large enough such that if they got by the filters that the gravel would plug up the internal home
18 systems. He is aware of this and has made no attempt to install a screen for the water system.

19 **IV. FAILURE TO PROTECT THE INTERESTS OF THE HOMEOWNERS AND**
20 **THE PUBLIC GOOD.**

21 Mr. Mills does not own a home in the subdivision as was the case when the homeowners
22 purchased lots. He has sold the house to the not for profit that he established supposedly as
23 part of his estate planning. The homeowners have no knowledge or information as to what
24 would happen if Mr. Mills, an unqualified operator of the water system was to die. It would
25 be in our opinion a dereliction of duty for the commission to give a Certificate of
26 Convenience and Necessity to an unqualified individual whose succession plan consists,
27

1 according to his attorney, of a personal estate plan. This could not be in the public good for
2 the homeowners to be left without a water and a sewer system to serve their homes.

3 Mills is currently and has been for many years operating illegally and outside the
4 boundaries of his legal and ethical business practices. It would be appropriate for the commission
5 to place the water system into receivership given this condition.

6 To the knowledge of the petitioners Mills has never had insurance on the water system to
7 protect the interests of the owner and the users. To the knowledge of the petitioners Mills may not
8 have the financial ability to sustain the project. We learn in his fillings that he is transferring assets
9 to various entities including the not for profit as a part of an unknown estate plan. This should give
10 pause to the commission as to the financial stability of the project. Mills' proposal for a certificate
11 of convenience and necessity is not economically feasible in the opinion of the petitioners. Due to
12 the small number of users and the excessive management costs the price of the service far exceeds
13 what other small water systems in the area charge for water and sewer where the systems are
14 operated in a properly established not for profit or HOA ownership. Because Mills decided to make
15 a profit on the system, he made the project financially unfeasible. We ask the commission to
16 provide a solution for the protection of the public good.

17 Mills failed to provide to the commission his application for a water permit to the DNR
18 and the approved construction plan. He has failed to follow what he submitted and had approved
19 by the DNR, y not following the engineering design and approved plan he has created operational
20 problems that might affect the health and safety of the users.

21 It is the opinion of the petitioners that the only factor that is proven of the 5 required to
22 receive a certificate of convenience and necessity is the need for the service.

23
24
25

Appendix 30
OF THE STATE OF MISSOURI

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.))

Respondents.)

WA-2018-0370
 File No. WC-2017-0037

AFFIDAVIT OF DERALD MORGAN

STATE OF OKLAHOMA)
) ss
 COUNTY OF OKLAHOMA)

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

1. My name is Derald Morgan. I am a ^{Intervenor} ~~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 ^{Intervenor} ~~Complainants~~ consisting of 13 pages and Exhibit ³⁰¹ ~~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 31 day of Dec, 2018.

[Signature]
 Notary Public

My commission expires:
10/02/21

