

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

| | | |
|---------------------------------------|---|-----------------------|
| In the Matter of Elm Hills Utility |) | |
| Operating Company, Inc.'s Request for |) | Case No. WR-2020-0275 |
| a Water and Sewer Rate Increase |) | |

MOTION FOR ORDER REGARDING THE PRODUCTION OF DOCUMENTS

COMES NOW the Office of the Public Counsel (“OPC”) and for its *Motion for Order regarding the Production of Documents*, states as follows:

1. This *Motion* is made pursuant to the statutory authority set forth in RSMo. § 386.450.

2. This *Motion* is not made pursuant to 20 CSR 4240-2.090 because this motion concerns the production of documents retained by persons who are not parties to this case but who, nevertheless, possess information relevant to this case. Should the Commission determine that requirements of rule 20 CSR 4240-2.090 apply regardless, the OPC notes that the issues raised herein have been addressed during telephone conferences between OPC, Elm Hills, and the presiding officer in these cases on August 5th and 13th of this year.

3. To provide greater clarity, the OPC will break this *Motion* into several parts.

Relationship of Entities from Which Documents are Requested

4. The case now before the Commission concerns the rates charged for water and wastewater service by Elm Hills Utility Operating Company, Inc.

5. Elm Hills Utility Operating Company, Inc. is owned by Elm Hills Utility Holding Company, Inc.

6. Elm Hills Utility Holding Company, Inc. is owned by CSWR LLC.

7. CSWR LLC is managed by Central States Water Resources, Inc.

8. The Annual Registration Report for Central States Water Resources, Inc., as filed with the Missouri Secretary of State on April 21, 2020 (included as Attachment A), lists the following individuals as the board of directors: Josiah Cox, Daniel Standen, Tom Rooney, and John Rigas

9. CSWR LLC is owned by US Water Systems LLC, a Delaware entity created on July 30, 2018.

10. US Water Systems LLC was created to facilitate the purchase of CSWR LLC by Sciens Capital Management LLC. A copy of the Unit Purchase Agreement is included as Attachment B.

11. A copy of CSWR LLC's independently audited financial statements has been included as Attachment C. These financial statements state as follows:

** _____

_____**

12. ** _____**¹ is another Delaware entity that was also created on July 30, 2018.

¹ The OPC does not believe the identity of this entity is confidential. However, because its existence was disclosed in a confidential data response, and acting out of an abundance of caution, the OPC has marked it confidential throughout.

13. In addition to the foregoing, the OPC has become aware of the existence of the Sciens Water Opportunities Fund, which is a private equity fund.

14. The front page of the Sciens Water Opportunities Fund's website (<https://scienswater.com/>) states as follows:

Sciens Capital Management LLC is an alternative asset management firm founded in 1994. With headquarters in New York and offices in London and Guernsey, Sciens has been investing in real assets strategies since 2007.

Sciens launched the Sciens Water Opportunities Fund in 2018 to make investments in the U.S. water sector. Sciens' approach is to identify the biggest challenges facing the U.S. water and wastewater industry today and solve them through the formation and development of national and regional leading companies that seek to meet these challenges. Sciens works closely with the management teams of its portfolio companies supporting them in achieving their strategic goals.

15. The Sciens Water Opportunities Fund lists CSWR LLC among the three companies in its portfolio on its website (<https://scienswater.com/our-portfolio/>).

16. On the "About Us" page of the website, the fund further identifies the following three people and their respective roles (among others): John Rigas, Chairman and Chief Executive Officer; Daniel Standen, Partner; Tom Rooney, Chairman Operating Committee.

17. The OPC has further found an SEC report for one Sciens Water Opportunities Domestic Fund Lp issued as a Form D/A Notice of Exempt Offering of Securities (included as Attachment D).

18. The SEC report lists Sciens Water Opportunities GP LLC as the general partner of the fund and Sciens Water Opportunities Management LLC as the

manager of the fund. The Report further states that the fund was created in 2018 and lists the following people (among others) as investment committee members of the management company of the fund: John Rigas, Daniel Standen, and Tom Rooney.

Understanding of Business Structure and General Statement of Discovery

Sought

19. Based on the forgoing information, the OPC believes that US Water Systems LLC purchased CSWR LLC using capital that was raised in part through the sale of equity in the Sciens Water Opportunities Fund.

20. The OPC further believes (based on the assessment of its technical experts) that there is likely to be at least one other entity that lies between US Water Systems LLC and the Sciens Water Opportunities Fund in the business structure which is responsible for sequestering the equity capital raised by the Sciens Water Opportunities Fund to at least partially capitalize its investment in CSWR LLC. The OPC will refer to this unknown entity (or possibly entities) as “Entity X.”

21. The OPC believes that Entity X is either owned by or managed by (or possibly just is) **_____**.

22. Finally, the OPC believes that US Water Systems LLC, Entity X, **_____**, the Sciens Water Opportunities Fund, and all other related entities are either wholly owned or majorly controlled by Sciens Capital Management LLC.

23. The OPC has prepared a visualization of this structure below:

Opportunities Fund to US Water Systems LLC (or anywhere else in the business structure) entered into any covenants or similar contractual arrangements (including debt instruments) that would preclude CSWR LLC or its subsidiaries from issuing debt in their own right.

25. The necessity of the first question should be self-explanatory; the OPC wants to understand how the utility is being financed and who owns/controls it.

26. The second question is necessary because if any entity from the Sciens Water Opportunities Fund to US Water Systems LLC (or anywhere else in the business structure) issued or otherwise raised debt financing as part of Sciens Capital Management's investment in CSWR LLC then there is an argument that said debt financing should be attributed to CSWR LLC and, consequently, to Elm Hills Utility Operating Company Inc. Of course, this argument would depend on many factors that are currently unknown to the OPC due to the lack of cooperation with OPC's attempted discovery, both through the data request process and through subpoenas.

27. The third question is necessary because if any entity above CSWR LLC in the business structure has entered into covenants or other contractual agreements (including debt instruments) that precludes CSWR LLC or its subsidiaries from issuing debt in their own right, then that would directly impact the capitalization of CSWR LLC or its subsidiaries (including Elm Hills Utility Operating Company Inc.) including, among other things, calling into question the reasonableness of using

hypothetical capital structures and hypothetical capital costs to set Elm Hills' rate-of-return for ratemaking.

Efforts to Acquire Information and Existence of Good Cause

28. When Sciens Capital Management LLC first purchased CSWR LLC, a meeting was held between the new owners, the Staff of the Commission, and the OPC. Tom Rooney was present at that meeting, and represented to the OPC that he had been hired/engaged by Sciens Capital Management LLC to specifically oversee its investment in CSWR LLC. Mr. Rooney further represented that he wished to be open and transparent regarding Sciens Capital Management LLC's ownership of CSWR LLC and its intent to be actively involved in strategic initiatives, including pursuing more cost efficient capital.

29. During the course of this case, a technical expert employed by the OPC reached out to Mr. Rooney seeking information related to the above issues.

30. In response, Elm Hills contacted the OPC to notify it that Elm Hills considered Mr. Rooney to be, or was sufficiently affiliated with, a party represented by counsel in this case and therefore could not be contacted directly by the OPC.

31. Coincident with this, the OPC sent Elm Hills a number of data requests seeking information aimed at addressing the above concerns.

32. Elm Hills responded to these data requests initially by indicating that it did not possess access to the information sought. (see Attachment E).

33. Elm Hills later supplemented some of these data response requests with an answer that the information being sought did not exist. (see Attachment F).

34. Undeterred, the OPC continued to seek information directly from the entities known to it at the time. The OPC therefore requested that the Commission issue four Subpoenas to Tom Rooney, US Water Systems LLC, **—————
—————**, and US Water Systems Management LLC.

35. The three subpoenas sent to US Water Systems LLC, **—————
—————**, and US Water Systems Management LLC were served on August 28, 2020. (see Attachments G, H, and I).

36. By Commission rule 20 CSR 4240-2.100(3), the recipients of the subpoenas had ten days from the date of service to either object or move to quash. None of the recipients have objected, moved to quash, or otherwise contacted the OPC pursuant to the subpoenas issued.

37. These three entities have effectively ignored the Commission's subpoenas.

38. The fourth subpoena, the one issued to Mr. Tom Rooney, was addressed to 667 Madison Ave. New York, NY 10065 because this was Mr. Rooney's address per the Annual Registration Report for Central States Water Resources, Inc., as filed with the Missouri Secretary of State on April 21, 2020.

39. This same address (667 Madison Ave. New York, NY 10065) is also the business address of Sciens Capital Management LLC, the address found on the Sciens Water Opportunities Fund Website (which lists Mr. Rooney as the chairman of the

operating Committee) (<https://scienswater.com/contact-us/>), both the business and mailing address listed for the Sciens Water Opportunities Domestic Fund Lp on the SEC's Edgar Filing Tracker Website (<https://sec.report/CIK/0001749222>), and the address of Sciens Water Opportunities Management LLC which is the manager of the Sciens Water Opportunities Domestic Fund Lp (as stated in the amended Notice of Exempt Offering of Securities filing made by the fund) and for which Mr. Rooney is identified as an investment committee member.²

40. Despite all of this, the OPC received in response to its attempt to serve Mr. Rooney at this address an affidavit of attempted service (see attachment J) that stated as follows:

8/21/2020 @ 1130 Hrs: Deputies Desilvio & Assenzio made an attempt at 667 Madison Ave and spoke with front security officers and receptionist Patricia for Sciens Capital Management who stated that the Deft. Tom Rooney is a former consultant with this Company. They have not used him recently and have not seen him in several months. He does not work out of this building.

41. The OPC contacted counsel for CSWR LLC, but CSWR LLC also refused to accept service of Mr. Rooney's subpoena and further was unable to provide a new address for Mr. Rooney such that service could be perfected.

42. As such, the OPC was not able to perfect service of Mr. Rooney's subpoena issued by the Commission.

² Incidentally the address is also the Address of Daniel Standen in the Annual Registration Report for Central States Water Resources, Inc., the address of both Mr. Standen and John Rigas as listed in the Sciens Water Opportunities Domestic Fund Lp Notice of Exempt Offering of Securities filing made with the SEC, and is the address of Sciens Water Opportunities GP LLC listed in the same filing.

43. In total that leaves three subpoenas ignored, and one unserved due to faulty contact information across a litany of filings.

44. As can be seen, the OPC has worked exhaustively to secure the information it seeks and has been unable to do so through any other means.

45. The inability of the OPC to secure the information requested through conventional means coupled with the importance of the information being sought as it relates to the capital structure of CSWR (and consequently its subsidiary Elm Hills Utility Operating Company, Inc.) establishes the good cause necessary for the Commission to issue an order for the production of documents pursuant to RSMo. § 386.450.

Documents Sought and From Whom

46. Pursuant to RSMo. § 386.450, the OPC seeks any and all books, accounts, papers, or records necessary to determine: (1) the existence and relationship between all entities that serve to facilitate Sciens Capital Management LLC's ownership of, control over, or investment in CSWR LLC and its subsidiaries; (2) the existence and terms of any debt financing raised by Sciens Capital Management LLC or its affiliates or subsidiaries for the purpose of financing Sciens Capital Management LLC or its affiliates or subsidiaries' investment in CSWR LLC; the existence, if any, of any covenants, terms, or contractual agreements made by Sciens Capital Management LLC or its affiliates or subsidiaries with regard to investment in CSWR LLC that would preclude or otherwise hinder the ability of CSWR LLC to raise debt financing at a consolidated or subsidiary level.

47. The OPC has included as attachment K a specific list of the books, accounts, papers, or records that it believes are necessary to discover this information.

48. The OPC requests that the Commission order the production of these books, accounts, papers, or records within this state from the following corporations or persons: Sciens Water Opportunities Fund Lp, US Water Systems LLC, **—————
—————**, Tom Rooney, John Rigas, and Daniel Standen.

49. The OPC wishes to make clear that it is not seeking any information whatsoever regarding the identity of investors beyond the control of Sciens Capital Management LLC (*i.e.* outside investors). The OPC's concern lies not with where the capital raised at the private equity level comes from, but rather, with the flow of that capital to CSWR LLC and the comingling of that capital with debt raised by Sciens Capital Management or its affiliates or subsidiaries.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission issue and order pursuant to RSMo. § 386.450 as set forth in the body of this *Motion* and further grant such other relief as it deems necessary.

