

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

In the Matter of the Application of Elm Hills            )  
Utility Operating Company, Inc. for a                    )  
Certificate of Convenience and Necessity.            )       **File No. SA-2018-0313**

**OPC’S RESPONSE TO PROPOSED CONDITIONS IN STAFF RECOMMENDATION**

Public Counsel requests that the Commission order additional conditions to ensure the public interest is served beyond those conditions set forth in the Staff Recommendation and modify one of Staff’s conditions. Prior to approving the transaction and associated conditions, the Commission should order Elm Hills to provide sufficient evidence to show how using debt proceeds in SM-2017-0150 for the systems in SA-2018-0313 would not cause a breach of its loan agreement and provide parties an opportunity to respond to any evidence adduced by Elm Hills.

**Background**

On July 30, 2018, Staff filed its recommendation and official case file memorandum recommending the Commission grant Elm Hills’s Application subject to 16 conditions.

The Commission ordered any party wishing to respond to the Staff’s conditions to file a response on August 10, 2018.

**Public Counsel’s Response**

Public Counsel has seen growing evidence that the Applicant’s related entities are not capable of providing an affordable solution to environmental compliance issues for those systems acquired by the Applicant’s related entities. Customers of the Applicant’s affiliates have telephoned Public Counsel’s office and/or filed public comments in rate cases about their dissatisfaction with extreme price swings caused by the Applicant’s affiliates’s business practices. These extreme price swings have been caused by a variety of factors, including

unreasonable financing terms and/or the deficiency of their business model to spread costs over a larger customer base. Growing evidence of consumer outrage and cries for rate relief and injustice calls into question the Applicant and its parent's business model, their qualifications, their financial ability, the economic feasibility of their proposals, and especially the public interest of their request. Despite these observed realities, Public Counsel recognizes that the subject transaction transpired with these customers consent through their homeowners association and no customer expressed a concern in the form of a public comment to this proceeding. However, Public Counsel is skeptical that public opinion will remain quiet once the utility requests rates to increase. In Staff's analysis of the economic feasibility of the proposal, the analysis only says that "rates are likely to increase." See Pg. 5 of 10 of the Staff's Official Case File Memorandum. This prediction will surely come true, and if history provides any lessons, the public is also likely to express outrage at the degree to which "rates are likely to increase."

It is for these reasons that Public Counsel requests the Commission adopt those protections provided in Staff's conditions and include further protections as provided in Public Counsel's conditions set forth below.

1. Because Elm Hills had made no request to encumber the assets of the newly acquired system, the Commission should prohibit encumbering these assets.
2. The Commission should require, prior to approving the Application, that Elm Hills submit evidence showing how applying debt proceeds originating from SM-2017-0150, would not result in a violation of the Construction and Security Agreement between Elm Hills and Fresh Start Ventures, LLC. If a violation would occur, then Elm Hills should be required to show how such violation will be cured prior to

Commission approval. (e.g., debt proceeds of the loan agreement are restricted by the defined terms of “Improvement” and “Land” suggesting these funds could not be applied to the acquired properties). Furthermore, Public Counsel, Staff, or other parties should be permitted an opportunity to respond to Elm Hills’ response to this condition.

3. The Commission, if it finds the acquisition to be appropriate, should modify its Order approving the transfer in SM-2017-0150 to allow for the debt proceeds in SM-2017-0150 to be applied to the newly acquired assets.
4. The Commission should re-state the financing conditions it set forth in the Indian Hills acquisition and apply them to Elm Hills. These conditions include:
  - a. In WO-2016-0045, the Commission noted in its order that the acquiring utility or its successors would “bear the burden of proof, in subsequent rate cases where the financing relevant to this case is at issue. At that time, the commission may order a hypothetical capital structure and cost of capital consistent with similarly situated small water companies in Missouri, or as the Commission may otherwise find appropriate.”
  - b. In the event Elm Hills becomes in violation of any term of its financing agreement, then it shall file a report with the Commission indicating its plan to cure such violation. If such a violation is waived, then Elm Hills shall indicate why the violation is waived and how long the waiver shall be effective.
  - c. Any modification as discussed in Paragraph number 3 should only be used for the acquisition of the assets, and the proposed tangible improvements to the

sewer systems that can be “booked to plant in service for purposes of ratemaking.”

- d. Elm Hills shall notify the Commission immediately if there are any changes to the current investment structure of investors in Elm Hills or its affiliate investors. This notice shall include all documents executed to complete such investment structure or ownership changes.
  - e. In the event of default on the Elm Hills loan, the certain debt investors shall file a written plan with the Commission how it will ensure continued funding necessary to maintain safe and adequate service for its customers.
5. Finally, in relation to Staff’s enumerated condition number 16, Public Counsel would ask that the Commission modify this condition to state, “Make no finding of the value and no finding of the prudence of this transaction. . .”

WHEREFORE, Public Counsel asks that the Commission adopt Public Counsel’s conditions as provided herein.

Respectfully submitted,

**/s/ Ryan Smith**

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**ATTORNEYS FOR THE OFFICE  
OF THE PUBLIC COUNSEL**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on August 10, 2018 to all counsel of record.

/s/ Ryan D. Smith