

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

In the Matter of the Application of	)	
Elm Hills Utility Operating Company, Inc.,	)	
and Missouri Utilities Company	)	
for Elm Hills to Acquire Certain Water and	)	Files Nos. SM-2017-0150 and
Sewer Assets of Missouri Utilities Company,	)	WM-2017-0151
For a Certificate of Convenience and Necessity,	)	
and, in Connection Therewith, To Issue	)	
Indebtedness and Encumber Assets.	)	

**RESPONSE TO MOTION FOR MORE DEFINITE STATEMENT**

Comes now Elm Hills Utility Operating Company, Inc. (“Elm Hills”), and, in response to the Office of the Public Counsel’s (OPC) Motion for More Definite Statement and Suggestions in Support (Motion for More Definite Statement), states as follows to the Missouri Public Service Commission (Commission):

1. On March 31, 2017, OPC filed its Motion for More Definite Statement. Therein, the OPC asks that Elm Hills be directed to “make a more definite statement indicating the legal authority that supports their adjustment to Commission-approved rates. . . .”

**BACKGROUND**

2. A high level review of the Elm Hills application may be helpful to understand the Company’s proposals. The application has two parts:

a. Elm Hills seeks a certificate of convenience and necessity to provide sewer service to current customers of State Park Village, Inc. In order to provide that service, Elm Hills would purchase the sewer system assets of State Park Village, Inc. Elm Hills proposes to provide service to these customers at the same rate they currently pay to State Park Village, Inc. – a flat rate of \$45 per month;

b. Elms Hills seeks to purchase the water and sewer assets of Missouri Utilities Company (MUC), to include its Certificates of Convenience and Necessity granted by the Missouri Public Service Commission in Case No. WA-92-291. MUC is an administratively dissolved corporation for which *a receiver was appointed in August of 2006.*

The current sewer rates for MUC (which have been in effect since 2009) are as follows:

<b>UNMETERED –</b>	<b>RATE PER MONTH</b>
Mobile homes in parks and apartments	\$8.80
Single Family Units	\$10.93
Commercial	\$19.40
<b>METERED -</b>	<b>RATE PER MONTH</b>
Minimum (to include 4500 gallons per month)	\$8.80
Plus a usage rate per 1,000 gallons of	\$1.41

The current water rates for MUC (which have also been in effect since 2009) are as follows:

<b>UNMETERED –</b>	<b>RATE PER MONTH</b>
Mobile homes in parks and apartments	\$6.34
Single Family Units	\$7.92
Commercial	\$14.24
<b>METERED -</b>	<b>RATE PER MONTH</b>
5/8 inch minimum (to include 4500 gallons per month)	\$8.80
3/4 inch minimum (to include 6000 gallons per month)	\$7.92
1 inch minimum (to include 12,000 gallons per month)	\$14.24
Plus a usage rate per 1,000 gallons of	\$1.05

*While MUC's tariffs provide for both a flat (unmetered) rate and a metered rate, there are no meters in place at MUC.*

Elm Hills proposes to charge MUC sewer customers a flat rate of \$45 per month for all customers; and, to charge the MUC water customers a \$30.51 per month flat rate for all

customers.

### LEGAL QUESTION

3. OPC's Motion points out that "Elm Hills does not invoke the small utility rate case procedure" in connection with its application. Of course, it could not, as Elm Hills is not today a water or sewer corporation and will not be a water and sewer corporation until if, and when, it purchases the assets of Missouri Utilities Company and State Park Village, Inc.

4. However, even if it could, the Commission is not required to utilize a small utility rate case procedure in order to set rates. This is because Missouri utility rates are set by the "file and suspend" method. In *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*, 535 S.W.2d 561, 566 (Mo. App. 1976), the Court of Appeals stated as follows:

The "file and suspend" provisions of the statutory sections quoted above lead inexorably to the conclusion that the Commission does have discretionary power to allow new rates to go into effect immediately or on a date sooner than that required for a full hearing as to what will constitute a fair and reasonable permanent rate. This indeed is the intended purpose of the file and suspend procedure. *Simply by non-action, the Commission can permit a requested rate to go into effect.* Since no standard is specified to control the Commission in whether or not to order a suspension, the determination as to whether or not to do so necessarily rests in its sound discretion.

(emphasis added)

5. The Commission always has the authority to allow rate tariffs to go into effect without suspension, as long as it has examined appropriate factors and the rates are believed to be just and reasonable. There is no legal requirement that this examination take place in a "small utility rate case" or that it be the result of any specific process.

6. OPC further alleges that "Elm Hills seeks to *modify Commission-approved rates* for customers of Missouri utilities Company. . . ." (Emphasis added) In fact, if Elm Hills' application is approved and it ultimately purchases the assets of Missouri Utilities Company and

State Park Village, the Commission must *establish Elm Hills initial water and sewer rates*, as MUC will cease to be a water and sewer corporation upon such closing.

7. While it is common practice for a purchaser to adopt the rates, rules and regulations that were previously used to serve customers of a regulated entity, it is not required. Further, in the situation where there is an initial grant of a certificate, rates, rules, and regulations must be established for the first time in the certificate case. This is most obviously required in a brand new utility system or a new expansion of a system. However, there is a similar question in the circumstance where a previously unregulated system is being purchased and becomes regulated for the first time.

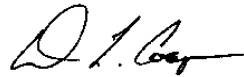
8. The Commission need only apply the standards applicable to the proposed actions. The sale of the MUC assets must be approved if it is found to not be detrimental to the public interest. *See, State ex rel. Fee Fee Trunk Sewer Company v. Litz*, 596 S.W.2d 566 (Mo. App. 1980). Given that these systems have been in receivership since August of 2006, both the sewer and water systems have, and have had, deficiencies (to include a Consent Judgment, Pettis County Case No. 08PT-CC00040) , and the Receiver has no means to obtain funds to address these deficiencies, Elm Hills' proposal, even with an increased rate, would seem not only to be "not detrimental" to the public interest, but, in fact, in the public interest.

9. In regard to the grant of a new certificate to serve the State Park Village customers, the Commission has traditionally applied the five "Tartan Criteria" established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994)((1) there must be a need for the service; (2) the applicant must be qualified to provide the service; (3) the applicant must have the financial ability to provide service; (4) the applicant's proposal must be

economically feasible; and (5) the service must promote the public interest). Elm Hills believes that these criteria are met by Elm Hills' proposal.

WHEREFORE, Elm Hills requests the Commission deny the OPC's Motion for More Definite Statement or, in the alternative, consider the above to be Elm Hills' statement as to the legal authority for its proposal.

Respectfully submitted,



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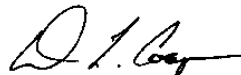
**CERTIFICATE OF SERVICE**

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 April 10, 2017, to the following:

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