

**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) File No. SA-2018-0313
Certificate of Convenience and Necessity)

SUR-REPLY TO OPC’S REPLY

COMES NOW Elm Hills Utility Operating Company, Inc. (“Elm Hills”), and for its Sur-Reply to the *OPC’s Reply* filed August 30, 2018, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1. First, in reading the *OPC’s Reply*, it does appear that this matter might be getting close to being ripe for Commission decision. In between the various statements, OPC seems to agree with the conditions proposed by the Staff Recommendation, with one addition – adding the phrase “and no finding of the prudence” to Staff’s final condition (Memo Condition 16). Elm Hills will leave the decision as to inclusion of that phrase to the Commission.

2. OPC also makes an allegation regarding additional Commission approval. OPC states as follows:

It is unclear what is meant by “Company generated funds;” however, to the extent Elm Hills could issue “additional equity contributions,” then Elm Hills needs to comply with 4 CSR 240-3.320, which addresses what an application must contain to request authority to issue stock.

OPC’s Reply, para. 4.

3. Elm Hills would not “issue ‘additional equity contributions.’” Additional equity contributions would be made by Elm Hills’ sole shareholder. Such contributions are many times referred to as “paid-in-capital.”

4. The following is the position previously taken by the Commission Staff in regard

to paid-in-capital:

Issuance of Stock. It is not clear that Missouri-American needs to request Commission authority to receive equity from its parent company. Section 393.200, RSMo requires that any “gas corporation, water corporation or sewer corporation organized or existing or hereafter incorporated under or by virtue of the laws of this state may issue stocks, bonds, notes or other evidences of indebtedness...” after receiving authority from the Commission.

Missouri-American does not need to issue stock to its parent company in order to receive equity funds. In fact, it is not clear to Staff why AWW would use such a process to infuse equity into its subsidiary, Missouri-American, when it can simply contribute capital to its subsidiary by providing additional paid-in capital. Staff submitted Staff Data Request No. 0003 to request an explanation as to why Missouri-American would desire to issue common stock to AWW rather than AWW simply making an equity capital infusion. Missouri-American responded as follows: “Missouri American’s preference is to receive a capital infusion from American Water to support its equity needs. However, Missouri American wanted to have the flexibility to do either or both as circumstances may dictate.”

Even if Missouri-American desires to have the flexibility to issue additional common equity shares to its parent company, it is not clear to Staff what purpose issuing new shares to AWW would serve because AWW already owns 100 percent of Missouri-American. Therefore, it would not matter if AWW owned one share or a million shares of Missouri-American, because it still maintains control of the subsidiary.

Staff Recommendation, Case No. WF-2007-0279 (filed March 26, 2007).

5. Elm Hills plans no issuance of stock in association with the referenced equity contributions/paid-in-capital. No amendment of the application is necessary.

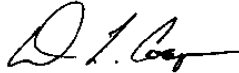
WHEREFORE, Elm Hills respectfully requests that the Commission consider this Sur-Reply and, thereafter, issue its order approving the Application, subject to the conditions

proposed in the Staff Recommendation.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:



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ATTORNEYS FOR ELM HILLS
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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS on this 31st day of August, 2018, with notice of the same being sent to all counsel of record, and that a copy of the same was sent on this date by electronic transmission to Staff Counsel and the Office of the Public Counsel.

