

**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                )

**RESPONSE TO ORDER DIRECTING FILING**

COMES NOW Elm Hills Utility Operating Company, Inc. (“Elm Hills”), and for its Response to the *Order Directing Filing* issued August 15, 2018, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1.       On May 1, 2018, Elm Hills filed its Application herein requesting, as an extension of its existing certificated territory, a CCN to maintain sewer systems for the public in two areas of Johnson County, Missouri, both located within three (3) miles of the systems currently owned and operated by Elm Hills. One area is currently being served by the Rainbow Acres Homeowners Association, Inc. (approximately 46 customers), and one area is currently being served by The Preserve Homeowners Association, Inc. (the Twin Oaks area – approximately 53 customers). In accordance with Commission order, notice was provided to the customers of both systems.

2.       On July 30, 2018, the Staff of the Commission filed a recommendation to approve the application subject to several conditions. The Commission directed that responses to the Staff Recommendation be filed by August 10, 2018. Counsel for Elm Hills apologizes for Elm Hills failure to respond previously to the Staff Recommendation. With the press of various demands, counsel failed to appropriate calendar and follow through on this item. Again, counsel apologizes for his failure.

3.       The Office of the Public Counsel (“OPC”) filed its *Response to Proposed*

*Conditions in Staff Recommendation* (OPC Response) on August 10, 2018.

4. On August 15, 2018, the Commission issued its *Order Directing Filing* wherein it directed that Elm Hills respond to both the Staff Recommendation and the OPC Response.

### **STAFF RECOMMENDATION**

5. The Staff Recommendation recommends approval of the Application, subject to various proposed conditions. (Memo, p. 1-16) Elm Hills has no objection to the Staff Recommendation, to include its proposed conditions.

6. Elm Hills does wish to clarify one aspect of the Staff Recommendation that may have relevance to OPC's Response below. The Staff Recommendation (Memo, p. 3 of 10), Staff states as follows, by on a data request response provided by Elm Hills:

Elm Hills requests no new financing authority in this case, and states to Staff that it will utilize previously-approved financing for Rainbow/Twin Oaks proposed capital improvements.

7. This was in artfully stated by Elm Hills. A more accurate description of this situation is the following: "Elm Hills requests no new financing authority in this case. The proposed capital improvements for Rainbow/Twin Oaks will be funded through Company generated funds or additional equity contributions."

### **OPC RESPONSE**

#### **General Comments**

8. OPC begins with a general comment that it does not believe that Elm Hills and its affiliated entities are capable of providing an affordable solution to environmental compliance issues. Accordingly, OPC believes that this calls into question the "business model" used by these companies.

9. The “business model” used by these companies is to make necessary improvements to non-compliant water and sewer systems that are incapable of making, or unwilling to make, such investments themselves.

10. Elm Hills and its affiliates have done this successfully. So far, these affiliates have acquired, or are in the formal application process to acquire, eight (8) noncompliant Missouri water systems and fourteen (14) noncompliant Missouri sewer systems and have either brought, or have final engineering plans to bring, each of them within Missouri Department of Natural Resources (DNR) requirements for safe drinking water and effluent discharge, respectfully. Examples of letters from DNR attesting to some of the affiliates’ work are attached as **Appendices A-D**.

11. Unfortunately, rates increases, generally of a significant nature, are a necessary result of this process. Whether one believes that the subject systems are in this condition because of the low rates, or they have low rates because they have chosen to not invest in the system, there is commonly a “low” rate in place for such noncompliant systems. The investment needed to bring such systems into compliance after years of neglect is always significant on a per customer basis, before one ever considers the cost of financing associated with such investment.

12. The OPC Response seems to imply a question as to what point it is too expensive to provide safe and adequate service? One answer to this question may be to review stories of small municipal and other publicly owned systems that are experiencing similar issues and rates when improvements to those systems are necessary. For example, Johnson County Public Water Supply District Number #3 (PWS D 3), which services approximately 168 wastewater customers

at the Hickory Hills subdivision<sup>1</sup> located approximately 1.5 miles from Elm Hills facilities, recently completed a wastewater treatment plant project to bring the PWSD #3 failing lagoon-serviced system into MDNR compliance. The PWSD #3 wastewater treatment plant project cost approximately \$3.6 Million. Of that \$3.6 Million, approximately \$2.4 Million was provided to PWSD #3 as a grant by the Johnson County Department of Economic Development. PWSD #3 then took at a \$1.2 Million USDA loan to pay the balance of the wastewater project. PWSD #3 estimates that the average Hickory Hills customer, as a result, pays \$79 per month for sewer service. High rates in these systems are not the result of a particular “business model,” but the impact the cost of compliance in small systems.

13. It is interesting that instead of recognizing these factors, the OPC chooses to blame Elm Hills financing and the “deficiency of their model to spread costs over a larger customer base.” (OPC Resp., p. 2) There is no financing at issue in this case. This is clarified above in Elm Hills’ response to the Staff Recommendation. Second, it is interesting that OPC seems to be less than enthusiastic about this case – a case where Elm Hills is attempting to add approximately 100 customers to its system the result of which would be to create the opportunity “to spread costs over a larger customer base.”

### **OPC “Further Protections”**

13. The OPC suggests (*OPC Condition 1*) that Elm Hills should not be allowed to encumber the assets to be acquired in these systems at issue and, presumably, the improvements to be made to these systems.

- In Case SM-2017-0150, Elm Hills obtained approval for the financing

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<sup>1</sup> This “Hickory Hills” subdivision is unrelated to the subdivision by the same name in Moniteau County to which Missouri-American Water Company provides service.

necessary to acquire and bring into compliance the Missouri Utilities Company water and sewer properties (which had been in receivership for approximately eleven (11) years and had Missouri Clean Water Commission fines for environmental compliance issues), along with the State Park Village sewer system. The Commission order in SM-2017-0150 authorizes Elm Hills to “create and make effective a first lien on the franchises, plant and system of Elm Hills, to secure its loan obligations.” This is a common form of Commission authorization for Missouri utility financings.

- The existing Elm Hills financing is an obligation of Elm Hills based upon the circumstances that existed at the time the financing was arranged and closed. That will not change whether or not the requested certificates of convenience and necessity are granted.

- The final arbiter of this issue is the governing statute itself. Section 393.190, RSMo, provides that any attempt to encumber a utility’s franchise, works, or system without the Commission’s approval “shall be void.” Elm Hills does not believe OPC Condition 1 is appropriate or necessary.

14. *OPC Conditions 2 and 3* concern debt proceeds authorized in SM-2017-0150 being applied to the to-be acquired properties. Elm Hills seeks no financing associated with the certificates of convenience and necessity requested in this case. The previous financing approved in Case SM-2017-0150 will be used for the purposes outlined in that case related to the Missouri Utilities Company and State Park Village systems. The balance of those projects, as well as the projects to be undertaken in the certificated areas that are the subject of this case will be funded through equity contributions. OPC Conditions 2 and 3 have no relevance to this case

and should not be adopted by the Commission.

16. *OPC Condition 4* suggests that certain financing conditions contained in a Commission order in an Indian Hills Utility operation Company, Inc. financing case (Case No. WO-2016-0045) be applied to Elm Hills Utility Operating Company, Inc. Again, Elm Hills needs no additional financing to complete the acquisition and improvements identified in its Application. Accordingly, there is no basis for adding financing conditions to the a Commission order.

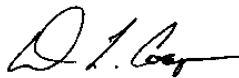
17. *OPC Condition 5* suggests that a Staff condition be modified to state “Make no finding of the value and no finding of the prudence of this transaction. . .” Elm Hills has no idea as to the meaning of this language in regard to a request for a certificate of convenience and necessity. Elm Hills does know that the Commission has for many years been able to set rates in future rate cases after grants of certificates of convenience and necessity utilizing the language proposed by Staff. Elm Hills therefore does not agree to this language.

**WHEREFORE**, Elm Hills respectfully requests that the Commission consider this response to satisfy the Commission’s Order Directing Filing 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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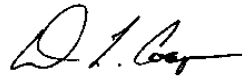
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ATTORNEYS FOR ELM HILLS  
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**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing document was filed in EFIS on this 20<sup>th</sup> 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.



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