

**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 Sewer Assets of)
Missouri Utilities Company, for a Certificate)
Of Convenience and Necessity, and, in)
Connection therewith, to Issue Indebtedness)
And Encumber Assets)

Case No. SM-2017-0150

NONUNANIMOUS STIPULATION AND AGREEMENT

COMES NOW, Elm Hills Utility Operating Company, Inc. (Elm Hills) and the Staff of the Missouri Public Service Commission (Staff), by and through respective counsel, pursuant to Commission regulation 4 CSR 240-2.115, respectfully request that the Missouri Public Service Commission (Commission) approve this *Stipulation and Agreement* as resolution of the issues specifically addressed herein. This Stipulation and Agreement was reached as the result of negotiations between, Elm Hills, Staff, and the Office of the Public Counsel (OPC). In support, Elm Hills and Staff (collectively, the Parties), state and agree as follows:

Relevant Factual History

1. On November 22, 2016, Elm Hills, in conjunction with Missouri Utilities Company (Missouri Utilities or MUC), filed a Joint Application seeking Commission approval to acquire certain water and sewer assets and the certificate of convenience and necessity (CCN) held by Missouri Utilities. In the same Joint Application, Elm Hills further seeks a new CCN for a sewer service area known as State Park Village, presently served by a non-regulated entity, State Park Village Sewer, Inc.

Missouri Utilities Company

2. Missouri Utilities obtained a CCN from the Commission in Case No. WA-

92-291, to provide water and sewer service in an area known generally as Elm Hills Park (the Missouri Utilities service area) in Pettis County near Sedalia, Missouri.

3. Missouri Utilities is in receivership, as a result of the Commission's order in Case No. WC-2006-0029, and Circuit Court (Cole County) Case No. 06ACCC00337, in which the court appointed a permanent receiver on August 14, 2006.

4. Missouri Utilities presently provides water service to approximately 120 customers and sewer service to approximately 115 customers. The source of supply for the water system is a single well. Missouri Utilities uses a pneumatic pressure tank to normalize pressure for the distribution system. There are no water meters for residential customers.

5. The sewer system consists of a gravity collection system and a three (3) cell lagoon treatment facility with a design flow of 24,425 gallons per day, and actual flow of 39,300 gallons per day, as stated on Missouri Utilities' operating and discharge permit issued by the Missouri Department of Natural Resources (DNR). Missouri Utilities is not currently in compliance with DNR environmental water protection regulations. Missouri Utilities has received notices of violation from DNR, including a notice of violation for exceeding permitted water pollutant discharge limits and failure to maintain sewage treatment facilities. By the terms of the current operating and discharge permit, on October 1, 2019, Missouri Utilities' sewage treatment facility will be required to meet additional prescribed discharge limits for ammonia and *Escherichia coliform* (E. coli) bacteria, in addition to other water pollutant discharge limits presently required by DNR. The current system is unable to meet the increased discharge limits. Additional treatment capability will be necessary to meet the new discharge limits.

State Park Village Sewer, Inc.

6. State Park Village is a community located in Johnson County near Warrensburg, Missouri. State Park Village Sewer, Inc. provides sewer service to State Park Village.

7. The State Park Village Sewer, Inc. wastewater system serves approximately 180 customers in State Park Village, according to information given to Staff by Elm Hills. The sewage treatment facility is an extended aeration type mechanical plant with design capacity of 20,000 gallons per day. The collection system consists of gravity sewers that also utilize three (3) electric-powered lift stations.

8. According to documents on file with the office of the Missouri Secretary of State, State Park Village Sewer, Inc. is a “nonprofit sewer company” organized under state statutes, specifically §393.825 to §393.861 RSMo. Nonprofit sewer companies organized under Chapter 393 are not subject to the jurisdiction of the Commission. According to the Secretary of State’s website, State Park Village Sewer, Inc. became administratively dissolved as of January 3, 2017.

9. The State Park Village wastewater system is currently under a DNR schedule of compliance and has DNR violations pending against it.

Settlement of Specific Issues

10. **Issues Settled:** The Parties agree and intend this *Stipulation and Agreement* to settle all issues within the above captioned case. The Parties recommend that the Commission approve this *Stipulation and Agreement* as a just and a fair compromise of their respective positions.

11. **Missouri Utilities Assets Transfer Request:** The Parties agree and

recommend that the Commission approve the sale of the Missouri Utilities water and sewer assets to Elm Hills because it is not detrimental to the public interest. The Parties further recommend that the Commission approve the transfer of the Missouri Utilities CCN to Elm Hills, and authorize Elm Hills to begin providing water and sewer service to the Missouri Utilities/Elm Hills Park service area.

12. **State Park Village Certificate of Convenience and Necessity and Assets Transfer Request:** The Parties agree and recommend, because it is necessary and convenient to the public interest, that the Commission issue a certificate of convenience and necessity to Elm Hills to authorize it to begin providing sewer service to the State Park Village service area.

13. **Rate Base:** The Parties agree that for Missouri Utilities the present rate base is \$0.00.¹ The Parties further agree that the present rate base for State Park Village Sewer, Inc is \$0.00.

14. **Rates:** Based upon a review of the current cost of service, the following rate adjustments are just and reasonable given the actual cash expenses of the utility operations.

a. **State Park Village service area:** As requested by Elm Hills in its Application, the Parties agree to a flat rate of \$45 per month. Elm Hills will apply this rate to its State Park Village customers.

b. **Missouri Utilities / Elm Hills Park service area:** First, for water service, the Parties agree that existing customer charges remain the same, but

¹ Elm Hills and Missouri Utilities have an agreed-upon purchase price for outstanding debts owed by Missouri Utilities; however, the Parties agree that payment of these debts by Elm Hills does not add to rate base. Instead, Elm Hills should be authorized to establish a regulatory asset as described in **Appendix A**.

no longer include a preset amount of water, and to adjust the commodity charge to \$2.47 per thousand gallons for metered customers, both residential and commercial. Secondly, for sewer service, the Parties agree that a flat rate of \$19.21 per month, for both residential and commercial customers, to reflect cost of service as incurred at present by Missouri Utilities.

15. **Depreciation:** The Parties seek a Commission order requiring Elm Hills to utilize the agreed upon depreciation rates set forth as attachment A.

16. **Financing Request:** The Parties recommend that the Commission authorize Elm Hills to enter into, execute and deliver loan agreements as described in the Application and to incur indebtedness, except that the Parties recommend that the aggregate principal amount of all such debt obligations shall not exceed One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000) and that any pre-payment penalty included in the loan agreements be no more one-half of the interest owed to the lender and be in place no longer than one-half of the term of the loan authorized herein. The Parties agree that **Appendix B** (marked Confidential, in accordance with Rule 4 CSR 240-2.135(2)(A)6 – “Strategies employed, to be employed, or under consideration in contract negotiations”) sets forth how the pre-payment penalty operates.²

Moreover, Elm Hills should be authorized to create and make effective a first lien on all of the franchises, plant and system of Elm Hills, to secure its obligations under the loan described above.

² Regarding the Financing Agreement: Staff is obliged to state that, while the terms of the “make whole” prepayment penalty as described in this agreement are an improvement from previous cases involving the related parties, both the interest rate and the “make whole” terms within the current proposed lending agreement into which Elm Hills seeks to enter continue to be a source of concern for Staff. Staff executes this Stipulation and Agreement, and makes the above recommendation to approve the financing agreement, only for the purposes of settlement. See below, Paragraphs 18 and 19 of the General Conditions.

Conditions

17. The Parties recommend the Commission approve the *Application and, If Necessary, Motion for Waiver* filed herein subject to the above and the conditions described in **Appendix A** attached hereto.

General Provisions

18. This *Stipulation and Agreement* is being entered into for the purpose of disposing of the issues that are specifically addressed herein. In presenting this *Stipulation and Agreement*, none of the signatories shall be deemed to have approved, accepted, agreed, consented or acquiesced to any procedural principle, and none of the signatories shall be prejudiced or bound in any manner by the terms of this *Stipulation and Agreement*, whether approved or not, in this or any other proceeding, other than a proceeding limited to the enforcement of the terms of this *Stipulation and Agreement*, except as otherwise expressly specified herein. The signatories further understand and agree that the provisions of this *Stipulation and Agreement* relate only to the specific matters referred to in this *Stipulation and Agreement*, and no signatory waives any claim or right which it otherwise may have with respect to any matter not expressly provided for in this *Stipulation and Agreement*.

19. This *Stipulation and Agreement* has resulted from extensive negotiations and the terms hereof are interdependent. If the Commission does not approve this *Stipulation and Agreement* in total, or approves it with modifications or conditions to which a signatory objects, then this *Stipulation and Agreement* shall be void and no signatory shall be bound by any of its provisions. The agreements herein are specific to this proceeding and are made without prejudice to the rights of the signatories to take

other positions in other proceedings except as otherwise noted herein.

20. If the Commission does not unconditionally approve this *Stipulation and Agreement* without modification, and notwithstanding its provision that it shall become void, neither this *Stipulation and Agreement*, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any signatory has for a decision in accordance with Section 536.080, RSMo 2000, or Article V, Section 18, of the Missouri Constitution, and the signatories shall retain all procedural and due process rights as fully as though this *Stipulation and Agreement* had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this *Stipulation and Agreement* shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

21. The Parties into this *Stipulation and Agreement* in reliance upon information provided by Elm Hills, Missouri Utility Company, and State Park Village, Inc. and this *Stipulation and Agreement* is explicitly predicated upon the truth of representations made by those parties.

22. If the Commission unconditionally accepts the specific terms of this *Stipulation and Agreement* without modification, the signatories waive, with respect to the issues resolved herein: their respective rights (1) to call, examine and cross-examine witnesses pursuant to Section 536.070(2), RSMo 2000; (2) their respective rights to present oral argument and/or written briefs pursuant to Section 536.080.1,

RSMo 2000; (3) their respective rights to the reading of the transcript by the Commission pursuant to Section 536.800.2, RSMo 2000; (4) their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000; and (5) their respective rights to judicial review pursuant to Section 386.510, RSMo Supp. 2011. These waivers apply only to a Commission order respecting this *Stipulation and Agreement* issued in this above-captioned proceeding, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this *Stipulation and Agreement*.

23. This *Stipulation and Agreement* contains the entire agreement of the signatories concerning the issues addressed herein.

24. The intent of the signatories to this *Stipulation and Agreement* has been fully and exclusively expressed in this document and the attachments appended hereto.

25. Acceptance of this *Stipulation and Agreement* by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has. Thus, nothing in this *Stipulation and Agreement* is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation.

WHEREFORE, the Parties hereby respectfully submit this *Stipulation and Agreement*, and request the Commission issue an Order approving the same; and

granting any further relief the Commission deems just and reasonable.

Respectfully submitted,

/s/ Jacob T. Westen

Jacob T. Westen
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**ATTORNEYS FOR ELM HILLS
UTILITY OPERATING COMPANY, INC.**

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 2nd day of August, 2017, to:

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//S// Dean L. Cooper

APPENDIX A

1. Approve the sale of Missouri Utilities' water and sewer assets and CCN to Elm Hills, authorizing Elm Hills to begin providing water and sewer service and authorizing MUC to cease providing water and sewer service effective at the time of closing on the assets;

2. Immediately grant Elm Hills a CCN to provide sewer service in the proposed State Park Village service area, as described in Appendix G of the Application and by the map included in the Staff Recommendation as Attachment K;

3. Require Elm Hills to file tariff adoption notice sheets for MUC's water and sewer tariffs, to become effective prior to Elm Hills closing on the assets;

4. Authorize Elm Hills to file a revised rate sheet in the MUC water tariff, to reflect an increase of MUC's existing water commodity charge from \$1.05 per 1,000 gallons to \$2.47 per 1,000 gallons, and to retain existing flat rates, and to retain existing customer charge amount but include no water with the customer charges, as described and recommended within the Staff Recommendation and as shown on the draft tariff sheet included as Attachment L to the Staff Recommendation, to become effective prior to Elm Hills closing on the MUC assets;

5. Authorize Elm Hills to file revised rate sheets in the MUC sewer tariff, to reflect a change to rates applying to all customers in the Elm Hills Park service area to \$19.21 flat rate per month, and to create new rates applying to all customers in the State Park Village service area of \$45.00 flat rate per month, as described and recommended within this memorandum and as Shown on the draft tariff sheet included as Attachment

M to the Staff Recommendation, to become effective prior to Elm Hills closing on either the MUC or State Park Village Sewer, Inc. assets, whichever occurs first;

6. Authorize Elm Hills to file revised or new tariff sheets in the MUC sewer tariff containing a service area map and written description for the State Park Village service area, to become effective prior to Elm Hills closing on the assets;

7. Prohibit Elm Hills from closing on any assets or operating as a water or sewer utility with associated assets until valid operation, billing, and emergency answering arrangements (contracts) can be in place and exercised immediately upon closing of assets;

8. Require Elm Hills to notify the Commission of closing of the MUC and State Park assets within five (5) days after such closing on any of the respective assets;

9. Authorize MUC to cease providing service immediately after closing of the respective assets, then after closing and notifications of such as contemplated in 4 above, remove MUC as an active water and sewer utility;

10. If closing on any of the respective MUC or State Park assets does not take place within thirty (30) days following the effective date of the Commission's order, require Elm Hills to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing on the respective assets, and additional status reports within five (5) days after each Additional thirty (30) day period, until closing takes place, or until Elm Hills determines that a sale of the respective assets will not occur;

11. If Elm Hills determines that a sale of any of the respective assets will not occur, require Elm Hills to notify the Commission of such, after which time the

Commission may modify, cancel, or deem null and void, the CCN issued to Elm Hills for the specific service area;

12. Authorize Elm Hills to utilize depreciation rates attached as Attachment A to this Stipulation and Agreement;

13. Require Elm Hills to keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts as specified in Commission rules;

14. Require Elm Hills to keep operations records identifiable for its Elm Hills Park water and sewer and its State Park Village sewer systems, including those for customer complaints/inquiries, vehicle mileage, equipment and telephone use records, and customer account records;

15. Require Elm Hills to maintain time sheets for all employees and officers, including Josiah Cox, to document time spent on Elm Hills matters; and for Elm Hills to maintain mileage logs to document transportation expense associated with the Elm Hills operations; time sheets and mileage logs should specifically identify time and mileage by individual system, the amount of time spent on construction projects and time spent on other activities such as non-regulated activities, including acquisition and/or merger activities, etc.;

16. Require Elm Hills to track outside contractor expense (for customer billing, customer calls, plant operator, etc.) for the Elm Hills systems, and for any other systems owned by First Round CSWR, LLC, Inc. or by entities it owns, in a manner that would allow identification of costs that were incurred for Elm Hills' business only; Elm Hills to

track contractor expenses such as mileage, equipment, labor telephone and other office expenses that are specific to Elm Hills only;

17. Require Elm Hills to comply with all Commission Rules including the filing of the annual reports and keeping current on payments of the Commission's annual assessments;

18. Authorize Elm Hills to collateralize its assets for purposes of the proposed financing arrangement;

19. Require Elm Hills to file with the Commission within ten (10) days of the issuance of any financing authorized pursuant to a Commission order in this proceeding, a report including the amount of financing issued, date of issuance, stated return required, maturity date, redemption schedules or special terms, if any, use of proceeds, estimated expenses, and the final executed financing agreement;

20. Require Elm Hills, its immediate parent, and its affiliates First Round CSWR, LLC and Central States Water Resources, Inc. to provide Staff and OPC access, upon reasonable written notice during normal working hours, to all books and records related to investments in Missouri regulated utility assets. The access to information shall include, but not be limited to, information provided to or received from the proposed debt investor, Fresh Start Venture LLC;

21. Within 10 days of the execution of the financing agreement, require Elm Hills to file with the Missouri Public Service Commission in this case the financing agreement, attachments, schedules, and other related documentation in EFIS. In the event that Elm Hills or Fresh Start Venture, LLC is in violation of any of the terms and/or covenants of the financing agreement, Elm Hills shall file a report with the Missouri

Public Service Commission indicating Elm Hills' plan to cure such violation. If such violation is waived by the lender or the borrower, then Elm Hills shall indicate why the violation was waived and how long the waiver shall be effective;

22. Require that Elm Hills and any successors or assigns shall bear the burden of proof, in subsequent rate cases where such financing is at issue, to show that it sought the least cost option available to it as to the proposed financing and ownership structure. If the Commission determines that Elm Hills has not carried this burden, then the Parties recommend the Commission order a hypothetical capital structure and cost of capital consistent with similarly situated small water and sewer companies in Missouri, or such other capital structure and/or cost of capital that the Commission may find to be appropriate;

23. Require that the proceeds from the proposed financing shall be used only for the acquisition of the Missouri Utilities and State Park Village Sewer, Inc. water and sewer utility assets, and the proposed tangible improvements to those water and sewer systems that can be booked to plant in service for purposes of ratemaking;

24. Elm Hills shall notify the Commission, Staff, and OPC immediately if there are any changes to the current investment structure or investors in Elm Hills, its immediate parent or its affiliates First Round CSWR, LLC and Central States Water Resources, Inc. This notice shall include all documents of these entities executed to complete such investment structure and/or ownership changes. Elm Hills shall notify the Commission immediately as to any changes to the current investment structure or investors in Fresh Start of which the owners of Elm Hills, the operators of Elm Hills, any of the owners' employees, or any of the operators' employees become aware;

25. Require Elm Hills to provide the CMAU Staff a sample of ten (10) billing statements issued to its customers. These should be submitted within thirty (30) days of the first billing sent to customers;

26. Require Elm Hills to distribute to Elm Hills' customers an informational brochure detailing the rights and responsibilities of the utility and its customers, consistent with the requirements of Commission Rule 4 CSR 240-13.040(3), within ten (10) days of closing on the assets;

27. Require Elm Hills to comply with 4 CSR 240 Chapter 13 with respect to Missouri Utilities and State Park Village Customers;

28. Require Elm Hills to provide an example of its communication efforts with the Missouri Utilities and State Park Village customers regarding its acquisition of the systems and methods by which customers can contact Elm Hills, within ten (10) days after closing on the assets; and,

29. Make no finding of the value of this transaction for ratemaking purposes, and make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded these financing transactions or any other matters pertaining to approval of this transfer of assets and the granting of a CCN to Elm Hills, including expenditures incurred related to water systems in the certificated service area, in any later proceeding.

30. Elm Hills is authorized to establish a regulatory asset ("Deferred Receivership Cost") on its balance sheet in the approximate amount of \$50,000, split equally between the Missouri Utilities' water and sewer systems, with those amounts to be amortized to expense over a five-year period. This amortization would begin the month after the

closing of the sale. This regulatory asset represents the amount paid to satisfy outstanding receivership fees owed to Missouri Utilities' current receiver.