

**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)	Case No. SM-2017-0150
Missouri Utilities Company, for a Certificate)	
Of Convenience and Necessity, and, in)	
Connection therewith, to Issue Indebtedness)	
And Encumber Assets.)	

**OFFICE OF THE PUBLIC COUNSEL’S
POSITION STATEMENT TO NON-UNANIMOUS STIPULATION**

COMES NOW the Missouri Office of the Public Counsel (“OPC”), by and through undersigned counsel, and files its Position Statement to the Non-Unanimous Stipulation (“Stipulation”) signed by Elm Hills Utility Operating Company, Inc. (“Elm Hills”) and the Staff of the Missouri Public Service Commission (“Staff”). OPC writes separately rather than joining the Stipulation to express our continued concern with the financing arrangement. OPC states as follows:

1. OPC states that the Stipulation is more favorable to consumers than was the initial application.
2. The initial application requested higher utility rates for some customers than would be charged under the terms of the Stipulation.
3. The initial application requested authorization for \$200,000 more in debt than would be issued under the terms of the Stipulation.
4. Staff made a number of recommendations in its Official Case File Memorandum of Staff’s Recommendation.¹ Many of Staff’s recommendations involve benefits

¹ SM-2017-0150, Item No. 27, Official Case File Memorandum, Pages 15-19.

to consumers, and many of these recommendations have been incorporated in the Stipulation.

5. The initial application and the Stipulation envision that consumers will benefit through Elm Hills' planned construction, which should create safer and more reliable water and wastewater service in the area. At the local public hearings, members of the public voiced their concern with the reliability and safety of the system.²
6. Elm Hills plans to address these concerns. In WR-2016-0064, Mr. Josiah Cox testified for a subsidiary of First Round CSWR, LLC ("First Round"), and Mr. Cox testified about his plan to lower the cost of debt and negotiate better terms in future acquisition cases.³
7. The above-captioned case represents a separate acquisition case that revisits Mr. Cox's representations to the Commission about First Round's plan and their subsidiaries' plan to seek lower cost of debt.
8. Although this Stipulation does not reduce the cost of debt in comparison to the initial application and the above-referenced case, the Stipulation improves upon the provision preventing prepayment.
9. OPC continues to voice its concern with the non-traditional financing arrangement. Staff has also expressed concern in the Stipulation at Page 5, footnote 2 that also expresses a similar concern with the interest rate and the make whole terms of the financing agreement.

² Local Public Hearing – Vol. 2, 5/9/2017, Page 41, Line 12-13 and Page 14, Lines 20-25

³ See Attached Exhibit A; or for the entire record, See WR-2016-0064, In the Matter of the Water Rate Increase Request of Hillcrest Utility Operating Co Inc., Transcript – Volume 2 (Evidentiary Hearing 5-19-16), Pages 115-117.

10. OPC has observed that other subsidiaries of First Round have put used and useful assets into service and received Commission approved rates in less than three years from the date of acquisition.⁴ These consumers and other subsidiaries of First Round would benefit by better financing terms – terms that do not handcuff the subsidiaries to a single lender during a time when the subsidiaries could otherwise freely seek and attract lower cost of debt. The subsidiaries would be well positioned to attract capital after rates go into effect – but not with terms that prevent them from seeking these opportunities that are in the public interest.
11. For the current case, OPC does not object to the Stipulation because OPC sees an improvement to the refinancing term, and OPC sees other benefits to consumers obtained through this Stipulation.⁵
12. Going forward, OPC would like to see the company make greater efforts to obtain a lower cost of debt. Staff has offered, through the terms of the Staff Recommendation, to provide guidance to the subsidiaries of First Round on additional acquisitions.⁶ OPC similarly is in a position to offer guidance including education on state and federal opportunities related to financing as OPC has knowledge and as OPC becomes aware of such opportunities for small utilities.
13. For the foregoing reasons, OPC states that it does not object to this Stipulation.

⁴ See, e.g., WR-2016-0064, In the Matter of the Water Rate Increase Request of Hillcrest Utility Operating Co Inc., Rate Increase Request (citing that March 2015 is when the Company started providing water and wastewater services).

⁵ As a separate point, OPC makes no comment on the appropriateness of the financing provision for purposes of ratemaking, which is better left to a future rate case.

⁶ SM-2017-0150, Item No. 27, Official Case File Memorandum, Page 3 of 19 (“Similarly, Staff recognizes the concerns raised by customers of the various Elm Hills’ affiliates related to the financing terms and the rate shock those customers are experiencing driven by the significant capital investment, and as a result, continues to review the appropriateness of the financing arrangement. While the instant Application is an acquisition and CCN case, Staff is of the opinion that it can provide guidance on not only future acquisition cases of similar scope, but also future rate cases related to previous and future acquisitions of additional affiliates. As discussed, MUC is an administratively dissolved”).

WHEREFORE, OPC submits its Position Statement as not objecting to the Stipulation.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

On this 3rd of August, 2017, I hereby certify that a true and correct copy of the foregoing motion was submitted to all relevant parties by depositing this motion into the Commission's Electronic Filing Information System ("EFIS").

/s/ Ryan D. Smith

1 **Q. Is there a penalty for an early satisfaction**
2 **of the debt?**

3 A. Yes, sir. There is.

4 **Q. Where is that in this document?**

5 A. I don't know where it is, but I can find it
6 here if you'd like me to --

7 **Q. Sure.**

8 A. Well, sir, I might have to really read it in
9 detail. I can't -- it's not -- do you want me to take a
10 second here? I have no problem doing that.

11 **Q. Perhaps your counsel could help.**

12 MR. COOPER: I can try, although this wasn't
13 my document, so --

14 BY CHAIRMAN HALL:

15 **Q. Well, I'm looking at Page 11 --**

16 A. There you go. That's -- I think, sir,
17 that's it.

18 **Q. And "borrower may, in its discretion, prepay**
19 **the loan in full at any time after the date hereof by**
20 **paying the applicable prepayment amount." So what is the**
21 **applicable prepayment amount?**

22 A. I believe the prepayment amount is the
23 amount of outstanding interest that's due on the loan --
24 over the course of the loan.

25 MR. COOPER: Mr. Cox, would -- just to

1 direct your attention, Exhibit A-2 is the make-whole amount
2 schedule.

3 WITNESS: Yes.

4 MR. COOPER: Is that going to be applicable?

5 WITNESS: I believe that's correct. There's
6 no page number on there to refer to.

7 BY CHAIRMAN HALL:

8 **Q. So, essentially, under those terms,**
9 **prepayment is out of the question?**

10 A. Staff asked me this question. My idea to
11 prepay would be -- in future days I acquire traditional
12 financing and I get a large enough aggregate basis, that
13 would take out this loan in terms of being lower rates
14 across a much larger base.

15 **Q. But if you're -- why would it ever be in**
16 **your best interest to prepay the loan if you're going to**
17 **have to pay all of the outstanding, unpaid interest?**

18 A. Because at a future date I could roll up a
19 number of utilities and do a true security offering. So
20 imagine like a \$25 million debt offering that covers all my
21 utilities, and so it would lower rates across all the
22 customers.

23 **Q. I still don't understand why it would lower**
24 **-- it would make any sense to prepay here, but --**

25 A. Would you like me to --

1 **Q. Sure.**

2 A. -- go into that a little bit?

3 **Q. Okay.**

4 A. So, you know, debt security markets, you
5 can't rate a bond or sell a bond that's below, you know, 25
6 million for sure. I think it's really \$50 million. You
7 know, you can't do a true debt offering. So the idea is as
8 I aggregate more systems, we prove that the regulatory
9 environment is stable for investing small failing water and
10 wastewater systems. We get to a big enough size, we get
11 different financing than this, so different terms, as we
12 get bigger. Then we take all of that debt and wrap it
13 together and then go do a debt offering that's a much lower
14 rate, and then apply those costs to all the operating
15 utilities.

16 **Q. So your business plan would involve at some**
17 **point in time getting a lower cost of debt than you have**
18 **right now?**

19 A. Every time I get -- acquire a new utility I
20 look for a lower debt rate. So I apply to commercial
21 banks. I go to private equity groups, institutional
22 investors every time. So Indian Hills, every acquisition I
23 make, I go out to market.

24 **Q. Do you receive -- do you receive income for**
25 **anything unrelated to water or sewer?**