

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held by  
telephone/internet audio on the  
15<sup>th</sup> day of April, 2020.

In the Matter of the Application of Elm Hills )  
Utility Operating Company, Inc., for ) **File No. SM-2020-0146**  
Authority to Acquire Certain Sewer Assets )

**ORDER GRANTING TRANSFER OF ASSETS AND GRANTING  
CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: April 15, 2020

Effective Date: May 15, 2020

On November 22, 2019, Elm Hills Utility Operating Company, Inc. (Elm Hills) filed an application requesting to acquire the assets of Central Rivers Wastewater Utility, Inc. (Central Rivers) as part of its application, Elm Hills also applied for a certificate of convenience and necessity (“CCN”) to expand Central Rivers’ service area to include the undeveloped Prairie Field Subdivision adjacent to Central Rivers’ Private Garden service area in Clay County, Missouri. That CCN application was assigned File No. SA-2020-0152, and was consolidated into this file.

The Commission issued notice of the application and set a deadline for the filing of applications to intervene, but no applications were received. The Commission ordered its Staff (Staff) to file a recommendation. Staff filed a recommendation on March 17, 2020, recommending approval of the transfer of assets and CCN subject to conditions. Elm Hills filed a response to Staff’s recommendation agreeing to those conditions. No other responses were received.

No party requested a hearing and the requirement for a hearing is met when the opportunity for a hearing has been provided.<sup>1</sup> Thus, the Commission will rule on the applications.

Elm Hills provides water service to approximately 133 customers and sewer service to approximately 375 customers in Pettis and Johnson Counties, Missouri. Elm Hills is a water corporation and a sewer corporation, subject to the Commission's jurisdiction.<sup>2</sup>

Central Rivers provides sewer service to approximately 295 customers in Ray, Clay, and Clinton Counties, Missouri. Central Rivers is a sewer corporation,<sup>3</sup> subject to the Commission's jurisdiction. As a regulated utility, Central Rivers must obtain the Commission's authorization before selling or transferring its assets.<sup>4</sup> In evaluating the proposed acquisition, the Commission can only disapprove the transaction if it is detrimental to the public interest.<sup>5</sup>

Elm Hills is a subsidiary of Central States Water Resources and has access to experienced employees who have also demonstrated managerial abilities over the water and wastewater utilities owned by Central States Water Resources. Elm Hills has access to highly qualified operating and engineering experience. Elm Hills also has appropriate customer service and billing capabilities through its contractors, which provide a benefit to customers. The Commission finds that allowing Elm Hills to acquire the assets of Central Rivers is not detrimental to the public interest.

The sales agreement for all of Central Rivers' sewer assets allows an adjustment of the purchase price in the event that the Elm Hills discovers information establishing a lower

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<sup>1</sup> *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

<sup>2</sup> Section 386.020(49),(59), RSMo 2016.

<sup>3</sup> Section 386.020(49), RSMo 2016.

<sup>4</sup> Section 393.190, RSMo 2016.

<sup>5</sup> *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393, 400 (Mo banc 1934).

net book value for the assets than Central Rivers represented. Elm Hills has not requested an acquisition adjustment in this matter and has the financial capacity to purchase and operate the Central Rivers systems at the agreed to purchase price. Elm Hills proposes to adopt Central Rivers' existing rates. Depreciation rates for Elm Hills and Central Rivers are similar. Staff recommends that Elm Hills continue to use Central River's depreciation rates ordered in File No. SR-2014-0247 for existing assets, and use Elm Hills' depreciation rates ordered in File No. SM-2017-0150 for assets acquired by Elm Hills, until the next rate case.

The Commission may grant a water or sewer corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."<sup>6</sup> The Commission articulated the specific criteria to be used when evaluating applications for utility CCNs in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.<sup>7</sup> These criteria are known as the Tartan Factors.<sup>8</sup>

There is a need for the service because as the Prairie Field Subdivision develops, homes will be built requiring service. Also, Central Rivers' existing service areas will continue to need sewer service. Elm Hills is qualified to provide the service as it is currently providing water and sewer services to approximately 508 customers throughout its Missouri service

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<sup>6</sup> Section 393.170.3, RSMo 2000.

<sup>7</sup> The factors have also been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, \*3 (Mo. P.S.C.).

<sup>8</sup> *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

areas. Elm Hills has the financial ability to provide the service and no financing approval is being requested, and Elm Hills has the financial capacity to purchase the Central Rivers systems. Additionally, the proposal is economically feasible because the Prairie Field Subdivision sewer system is being contributed by the developer, and the Central Rivers systems already exist. The proposal promotes the public interest as demonstrated by positive findings in in the first four Tartan Factors.

The Commission finds that Elm Hills possesses adequate technical, managerial, and financial capacity to operate the water system it wishes to purchase from Central Rivers. The Commission concludes that the factors for granting a CCN to Elm Hills have been satisfied and that it is in the public interest for Elm Hills to provide water and sewer service to the Prairie Field Subdivision and the service areas currently served by Central Rivers. The Commission will authorize the transfer of assets and grant Elm Hills the certificates of convenience and necessity to provide water and sewer service within the proposed service areas, subject to the conditions in Staff's memorandum.

Elm Hills also seeks a waiver of the Commission's 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D). Elm Hills certifies that it has had no communication with the office of the Commission regarding any substantive issue likely to be in this case during the preceding 150 days.

**THE COMMISSION ORDERS THAT:**

1. Elm Hills Utility Operating Company, Inc.'s request for waiver from the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D) is granted.
2. Central Rivers Wastewater Utility, Inc. is authorized to sell and transfer to Elm Hills Utility Operating Company, Inc. the assets identified in the Application and Motion for Waiver.

3. Elm Hills Utility Operating Company, Inc. is granted a Certificate of Convenience and Necessity to install, acquire, build, construct, own, operate, control, manage and maintain sewer systems in Clay County, Clinton County and Ray County, Missouri, in the areas currently served by Central Rivers Wastewater Utility, Inc.

4. Elm Hills Utility Operating Company, Inc. is granted a Certificate of Convenience and Necessity to install, acquire, build, construct, own, operate, control, manage and maintain a sewer system in Clay County, Missouri, in the Prairie Field Subdivision as an expansion of the Private Gardens service area as described in Attachment C of Staff's March 17, 2020, Recommendation and Memorandum.

5. The transactions are subject to the following conditions as put forth in Staff's March 17, 2020, Memorandum:

- A. Elm Hills shall adopt Central Rivers existing sewer rates for the former Central Rivers service areas;
- B. Elm Hills shall use depreciation rates ordered in File No. SR-2014-0247 for existing assets, and use Elm Hills' depreciation rates ordered in File No. SM-2017-0150 for assets acquired by Elm Hills until the next rate case.
- C. Elm Hills shall submit revised tariff sheets, to become effective upon closing on the assets, adding Central Rivers service area maps, service area written descriptions, sewer rates, and a revised index to be included in its EFIS water tariff P.S.C. MO No. 2;
- D. The delinquent Central Rivers PSC assessment of \$1,009.31 be paid within thirty (30) days of closing on the assets.
- E. Elm Hills shall notify the Commission of closing on the assets within five days after such closing; If closing on the utility assets does not take place within 30 days following the effective date of the Commission's order approving such, Elm Hills shall submit a status report within five days after this 30 day period regarding the status of closing, and additional status reports within five days after each additional 30 day period, until closing takes place, or until Elm Hills determines that the transfer of the assets will not occur; If Elm Hills determines that a transfer of the assets will not occur, Elm Hills shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made;
- F. Elm Hills shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;

G. Elm Hills shall create and maintain documentation and analysis supporting rate base valuation of the Central Rivers assets as of the date of acquisition for the purposes of Elm Hills's next general rate case; and

6. Nothing in this order shall be considered a finding by the Commission of the value of a transaction for ratemaking purposes.

7. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to Elm Hills, including expenditures related to the certificated service area, in any later proceeding.

8. This order shall become effective on May 15, 2020.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and  
Holsman CC., concur.

Clark, Senior Regulatory Law Judge.