

**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**

**STAFF RECOMMENDATION**

**COMES NOW** the Public Service Commission Staff (Staff), by and through counsel, and for its *Staff Recommendation* recommends that the Commission approves the transfer of assets from Missouri Utility Company (Missouri Utilities) to Elm Hills Utility Operating Company, Inc. (Elm Hills), and grant Elm Hills a Certificate of Convenience and Necessity (CCN) to provide regulated water and sewer services. In support of this *Staff Recommendation*, Staff states as follows:

**Procedural History**

1. On November 22, 2016, Elm Hills, in conjunction with Missouri Utilities, filed a *Joint Application* for Elm Hills to acquire certain water and sewer assets of Missouri Utilities and the CCN. Elm Hills has also filed for a CCN for a sewer service area known as State Park Village that is presently served by a non-regulated entity, State Park Village Sewer, Inc., including purchase of its sewer plant.<sup>1</sup>
2. On December 1, 2016, the Commission issued its *Order Directing Notice, Setting Deadline for Intervention, and Directing Staff to File a Recommendation*. The Order set an intervention deadline of January 18, 2017, and a deadline of

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<sup>1</sup> Elm Hills filed two *Applications*, one for sewer service, and one for water service. The water service case was subsequently consolidated into this matter. See WM-2017-0151, EFIS Item 6, *Order Consolidating Cases*.

January 31, 2017, for Staff to either file a recommendation or a status update. The Commission received no intervention requests.

3. On January 31, 2017, Staff filed a status update that its review and investigation remained in progress.

4. On March 15, 2017, the Commission issued an Order granting the Office of the Public Counsel's (OPC) request to set local public hearings, and ordered Staff to file a second status report wherein Staff would propose an anticipated date to file a *Staff Recommendation*.

5. On March 20, 2017, Staff filed the ordered Status Report, and identified that Staff would file a *Staff Recommendation* thirty days after the scheduled local public hearings. The last local public hearing in this matter occurred on May 9, 2017, and accordingly, Staff now files its *Staff Recommendation*.

### **Applicable Law**

6. Pursuant to § 393.190 RSMo, no regulated utility shall sell or transfer its assets or franchise without having first secured authorization from the Commission.

7. When deciding whether to authorize a regulated entity to incur indebtedness through a financing agreement, the Commission must decide if the financing agreement is "not detrimental to the public interest."<sup>2</sup> As a part of that consideration, a "detriment [to the public interest] is determined by performing a balancing test where attendant benefits are weighed against direct or indirect effects of the transaction that would diminish the provision of safe or adequate of service or that

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<sup>2</sup> *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980); *State ex rel. City of St. Louis v. P.S.C.*, 335 Mo. 448, 459-460, 73 S.W.2d 393, 400 (Mo. banc 1934).

would tend to make rates less just or less reasonable.”<sup>3</sup>

8. Moreover, pursuant to § 393.170 RSMo, no water or sewer corporation shall provide service to consumers without first having obtained approval from the Commission. In determining whether the provision of utility service is necessary and convenient for the public, the Commission has traditionally applied the five “Tartan Criteria” established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994): (1) there must be a need for the service; (2) the applicant must be qualified to provide the service; (3) the applicant must have the financial ability to provide service; (4) the applicant’s proposal must be economically feasible; and (5) the service must promote the public interest.

9. As more fully detailed in the attached *Staff Memorandum*, based on its investigation, Staff recommends that, with the proposed conditions as detailed in the *Staff Memorandum*, the transfer of assets to Elm Hills is not detrimental to the public interest; and, that granting Elm Hills the authority to operate is necessary and convenient for the public service.

### **Financing Request**

10. As a part of the *Joint Application*, Elm Hills further seeks approval from the Commission under § 393.190 RSMo to incur indebtedness. The *Joint Application* included a request for financing under similar terms as other utility entities affiliated with First Round CSWR, LLC (First Round), the parent company of Elm Hills Utility Holding Company, Inc., which is the holding company for Elm Hills.

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<sup>3</sup> *In the Matter of Union Electric Company, d/b/a AmerenUE*, 13 Mo. P.S.C.3d 266, 293 (2005); and see *In the Matter of Great Plains Energy, Inc., Kansas City Power & Light Company and Aquila, Inc.*, 17 Mo.P.S.C.3d 338, 541 (2008).

11. Staff has raised concerns in the past on the basis of similar financing agreements sought by utility entities affiliated with First Round, and Staff continues to be concerned regarding the terms of the agreement. However, Staff suggests that on balance, and with condition by the Commission, the financing request is not detrimental to the public interest and therefore recommends approval. See the attached *Staff Memorandum* for the analysis.

### **Rate Proposal**

12. Staff notes that increasingly, customers of regulated water and sewer systems encounter rate shock when the utility files a subsequent rate case to capture capital expenditures resulting from installation of needed capital investment to provide safe and adequate service. The underlying facts of this matter are no different; current rates for the customers of Missouri Utilities are artificially low and necessary capital expenditures for safe and adequate service will ultimately cause an increase in rates for customers.

13. In an effort to mitigate rate shock, Staff recommends that as a part of this transfer of assets and CCN case, the Commission issue an order approving the use of interim rates and adopting a process to implement interim rates, which would go into effect after review and approval by the Commission, no earlier than thirty days after the filing of Elm Hills' next rate case, and remain in effect during the rate case until the effective date of rates resulting from that case. Staff has provided a more detailed, draft proposed process to the parties for their review and consideration.

14. Broadly, the interim rate, filed by Elm Hills as a proposed tariff at the start of its rate case subsequent to this matter, would allow for, subject to refund, the

recovery of the capital investments confirmed to be used and useful at that time, for the pendency of the subsequent case. Staff would file a Recommendation as to whether the proposed interim rates accurately reflected the then in-service, used and useful plant. The interim rate would only go into effect with an order of approval by the Commission. Staff further recommends the parties should pursue an agreement in this matter regarding all other ratemaking parameters involving interim rates to be included in any order from the Commission.

15. The courts have held that the origination statutes for the Public Service Commission grant the Commission the authority and the discretion to establish interim rates.<sup>4</sup> The Commission further has authority to grant nonemergency interim rate relief on a case-by-case basis, where the Commission finds that particular circumstances necessitated such relief.<sup>5</sup>

16. The Commission has implemented interim rates in other cases, including small water and sewer rate cases. See, SO-2014-0052 (case proposing interim rates), SR-2014-0067 and SR-2014-0068 (cases establishing interim rates), WR-2013-0436 (establishing interim rates), SO-2008-0289 (case establishing interim rates as part of an asset transfer); SR-2008-0080 (case setting interim rates subject to refund while rate case was pending); WR-2000-557 (case setting interim rates).

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<sup>4</sup> *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 566-568 (Mo. App. 1976)(“We hold that the Commission has power in a proper case to grant interim rate increases within the broad discretion implied from the Missouri file and suspend statutes and from the practical requirements of utility regulation.”); See also, *State ex rel. Utility Consumers Council of Missouri, Inc., v. Public Service Commission*, 585 S.W.2d 41, 48 (Mo. banc 1979); Sections 393.140(11) and 393.150.

<sup>5</sup> *In Re Timber Creek Sewer Co., Inc.*, SR-2008-0080, 2007 WL 3243348, at \*2 (Mo. P.S.C. Oct. 30, 2007)(citing *State ex rel. Arkansas Power & Light Company v. Public Service Commission*, 736 S.W. 2d 457 (Mo. App. 1987)).

**WHEREFORE**, Staff respectfully submits this *Staff Recommendation* for the Commission's information and consideration, and requests the Commission approve the transfer of assets to Elm Hills, and grant Elm Hills a Certificate of Convenience and Necessity, with conditions, to provide water and sewer service to the requested service areas.

Respectfully submitted,

**/s/ Jacob T. Westen**

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or electronically mailed to all parties and or their counsel of record on this 8<sup>th</sup> day of June, 2017.

**/s/ Jacob T. Westen**