

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 12th day of September, 2018.

In the Matter of the Application of Elm Hills Utility Operating Company, Inc. for a Certificate of Convenience and Necessity)
) **File No. SA-2018-0313**
)

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY AND GRANTING WAIVER**

Issue Date: September 12, 2018

Effective Date: September 22, 2018

On May 1, 2018, Elm Hills Utility Operating Company, Inc. ("Elm Hills") filed an application with the Missouri Public Service Commission ("Commission") requesting that the Commission grant it a Certificate of Convenience and Necessity ("CCN") to install, own, acquire, construct, operate, control, manage and maintain sewer systems in Johnson County, Missouri. The requested CCN would allow Elm Hills to provide sewer service to existing developments known as Rainbow Acres, serving 46 existing customers, and Twin Oaks or The Preserve, which currently has approximately 53 customers. To provide service to the proposed areas, Elm Hills requests permission to purchase substantially all the sewer assets from the Rainbow Acres Homeowners Association and The Preserve Homeowners Association ("Associations").

The Commission issued notice and set a deadline for intervention requests, but no persons requested to intervene in this proceeding. On May 25, 2018, the Commission directed Elm Hills to provide notice to all properties currently being served by the

Associations. On July 30, 2018, the Commission's Staff filed its Recommendation and Memorandum to approve the transfer of assets and the granting of the CCN, subject to certain conditions. Staff advises the Commission to issue an order that would:

1. Grant Elm Hills a CCN to provide sewer service in the proposed Rainbow Acres and in the proposed Twin Oaks/Preserve service areas as described in the Application and modified in this memorandum;
2. Authorize Elm Hills to file new tariff sheets in its sewer tariff showing a service area map and written description for Rainbow Acres and for Twin Oaks/Preserve to become effective prior to Elm Hills closing on the assets;
3. Require Elm Hills to file new rate sheets in its sewer tariff, to reflect a monthly flat rate of \$15 applicable to each of the Rainbow Acres residential customers, and a flat rate of \$140 per month applicable to the homeowners association in Twin Oaks/Preserve, to become effective prior to Elm Hills closing on the assets;
4. Require Elm Hills to file a revised tariff sheet in its sewer tariff, applying existing service charges to Rainbow Acres and to Twin Oaks/Preserve;
5. Require Elm Hills to file new tariff sheets outlining rules for pressure sewers and pump units, applicable to customers in Twin Oaks/Preserve, to become effective prior to Elm Hills closing on the Twin Oaks/Preserve assets;
6. Require Elm Hills to notify the Commission of closing on the Rainbow Acres and Twin Oaks/Preserve assets within five (5) days after such closing on any of the respective assets;
7. If closing on any of the 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 any of the respective assets will not occur;
8. 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, and require any necessary and appropriate tariff filing action;

9. Require Elm Hills to file a rate case within two (2) years of its closing date on the Twin Oaks/Preserve assets;
10. Require Elm Hills to utilize its existing sewer depreciation rates for the Rainbow Acres and Twin Oaks/Preserve utility assets;
11. Require Elm Hills to continue to keep all of its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
12. Require Elm Hills to provide the CXD 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 in Rainbow Acres and Twin Oaks/Preserve;
13. Require Elm Hills to distribute to all residential sewer customers in Rainbow Acres and Twin Oaks/Preserve 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;
14. Require Elm Hills to provide an example of its communication efforts with the Rainbow Acres and Twin Oaks/Preserve 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. The version of the communication sent to customers in the Twin Oaks/Preserve service area should also state that when Elm Hills seeks a rate increase with the Commission, which could happen within two (2) years, it intends to propose a new rate applicable to individual customers. And if and when such a rate is approved, then instead of their homeowners association paying sewer system expenses, customers would individually receive sewer bills similar to bills that other sewer customers receive, and they will be responsible for payment of such bills;
15. Require Elm Hills to submit a notice in the case file regarding completion of sending the above-recommended bill examples, customer informational brochure, and revised contact information, resulting from these transfers of assets; and,
16. 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 sewer systems in the certificated service areas, in any later proceeding.

On August 20, 2018, Elm Hills filed its response, stating that it has no objection to the conditions in the Staff Recommendation. The Office of the Public Counsel (“OPC”) proposed several conditions in addition to Staff’s recommended conditions, all but one of which were subsequently withdrawn by OPC. OPC continues to suggest that the Commission add a phrase to Staff’s Condition No. 16 to state that the Commission makes no finding of prudence of the Elm Hills transaction. Since the Commission always has the authority to consider prudence in a future Elm Hills rate proceeding, the proposed language is unnecessary and will not be adopted.

No party has objected to the Staff recommendation within the time set by the Commission. Thus, the Commission will rule upon the unopposed application. No party has requested an evidentiary hearing, and no law requires one.¹ Therefore, this action is not a contested case,² and the Commission need not separately state its findings of fact.

The Commission may grant a 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.”³ 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

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

² Section 536.010(4), RSMo 2016.

³ Section 393.170.3, RSMo 2016.

public interest.⁴ The Commission finds that Elm Hills possesses adequate technical, managerial, and financial capacity to operate the sewer systems it wishes to purchase from the Associations. The Commission concludes that the factors for granting a certificate of convenience and necessity to Elm Hills have been satisfied and that it is in the public interest for Elm Hills to provide sewer service to the customers currently being served by the Associations. Consequently, based on the Commission's independent and impartial review of the verified filings, the Commission will authorize the transfer of assets and grant Elm Hills the certificate of convenience and necessity to provide sewer service within the proposed service areas, subject to the conditions described above.

The application also asked the Commission to waive the 60-day notice requirement under 4 CSR 240-4.017(1). Elm Hills asserts that good cause exists in this case for granting such waiver because it has had no communication with the Office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case. In addition, Elm Hills states that delay in filing the application would not be in the public interest because of the health and safety issues involved. The Commission finds that good cause exists to waive the notice requirement, and a waiver of 4 CSR 240-4.017(1) will be granted. Since any delay in completing the proposed transactions could impact the health and safety of customers, the Commission will make this order effective in ten days.

THE COMMISSION ORDERS THAT:

1. Elm Hills Utility Operating Company, Inc.'s request for a waiver of the notice requirement under Commission Rule 4 CSR 240-4.017(1) is granted.

⁴ 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.).

2. Elm Hills Utility Operating Company, Inc. is granted the certificate of convenience and necessity to provide sewer service within the authorized service areas as more particularly described in the application, subject to the conditions and requirements contained in Staff's Recommendation, including those conditions described in the body of this order.

3. Elm Hills Utility Operating Company, Inc. is authorized to acquire the assets of the Rainbow Acres Homeowners Association and The Preserve Homeowners Association identified in the application.

4. Elm Hills Utility Operating Company, Inc. is authorized to take such other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the application.

5. This order shall become effective on September 22, 2018.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

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

Bushmann, Senior Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission,
at Jefferson City, Missouri, this 12th day of September 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

September 12, 2018

File/Case No. SA-2018-0313

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.