

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

**STAFF REPLY TO OPC’s RESPONSE TO PROPOSED
CONDITIONS IN STAFF RECOMMENDATION**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Reply to OPC’s Response to Proposed Conditions in Staff Recommendation* in this matter hereby states:

1. Elm Hills Utility Operating Company (“Elm Hills”) filed an *Application and Motion for Waiver* asking the Commission for permission to acquire and to grant it a certificate of convenience and necessity (“CCN”) for certain service areas in Johnson County known as the Rainbow Estates area and the Twin Oaks or Preserve area. Staff filed its *Recommendation* on July 30, 2018, recommending that the Commission approve that *Application* conditioned on Staff’s specific recommendations. The Office of the Public Counsel (“OPC”) filed a *Response* on August 10, 2018, iterating several of its own recommendations. Staff now replies to OPC.

2. Before specifically addressing OPC’s response, Staff notes that Commission Rule 4 CSR 240-3.305 outlines the filing requirements for a sewer utility to apply for a CCN. Elm Hills provided each of these elements with its *Application* at the time of filing. Staff’s *Recommendation* is correct that the Company has met all statutory and rule-based requirements to qualify for a CCN and that with Staff’s previously proposed recommendations, it is proper for the Commission to grant Elm Hills’ request

for a CCN. Nevertheless, OPC has recommended that additional conditions are necessary.

3. OPC requests that the Commission adopt Staff's proposed recommendations along with five of its own enumerated conditions. No affidavits, workpapers, resources or case law have been provided in support of OPC's conditions. OPC in its Paragraph 1 states that the Commission should prohibit the encumbering of the Elm Hills assets. Elm Hills in its *Application* did not seek to encumber the assets of the Rainbow Estates or the Twin Oaks/Preserve area and Staff finds OPC's recommendation to be unnecessary. Section 393.190.1, RSMo, requires all water and sewer corporations to obtain Commission approval before mortgaging or otherwise encumbering the whole or part of a franchise, works or systems. Therefore, Elm Hills cannot encumber the assets of the Rainbow Estates area and the Twin Oaks or Preserve area systems without specific Commission permission. There is no need to condition the CCN on a limitation that already exists in statute. Additionally, the time may come when a future Commission may choose to allow the Company to encumber some or all of its assets. This is simply an inappropriate and unnecessary condition for a CCN. Therefore, Staff recommends the Commission should not include OPC's proposed condition No. 1 in its *Order*.

4. OPC further asks the Commission in its Paragraph 2 to set a condition requiring Elm Hills to submit evidence that it would not violate its *Construction and Security Agreement* with Fresh Start Ventures, LLC, by using debt proceeds originating from SM-2017-0150. This is an unnecessary condition. There is absolutely no need for the Commission to interject itself into the relationship of Elm Hills and its lender. For

example, Elm Hills and Fresh Start may agree that Elm Hills may use debt proceeds originating from SM-2017-0150.

5. OPC has also proposed in Paragraph 3 of its *Response* that the Commission modify its order issued in Case No. SM-2017-0150, to state that the debt proceeds in that case be applied to the newly acquired assets. The Commission has already approved the financing agreement in Case No. SM-2017-0150 and Staff does not consider it either necessary or appropriate to modify that decision now.

6. In Paragraph 4 of its *Response*, OPC has proposed that the Commission should include in its order certain conditions that it included in its order for Case No. WO-2016-0045, regarding a transfer of assets acquired by Indian Hills Utility Operating Company, Inc. Staff notes that, unlike Case No. WO-2016-0045, this is not a financing case and therefore these conditions are not appropriate in this proceeding.

7. As to the OPC's Paragraph 5, Staff notes that the prudence of a transaction may always be considered in the future rate proceeding of a public sewer utility regulated by the Commission and therefore, this proposed condition is unnecessary.

8. Finally, OPC provides general commentary as to the "Applicant's related entities" not being capable of providing an affordable solution to environmental compliance issues for their systems. However, OPC does not define an "extreme price swing" or "large customer base" and omits discussion of the history of the systems' rates. It also does not offer any proposal as to a solution for the systems or what OPC might consider appropriate.

WHEREFORE, Staff prays that the Commission will accept this *Reply*; and grant such other and further relief as the Commission considers just in the circumstances.

Respectfully submitted,

/s/ Whitney Payne

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 20th day of August, 2018, to all counsel of record.

/s/ Whitney Payne