

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

In the Matter of Elm Hills Utility Operating)
Company, Inc’s Request for a Water and)
Sewer Rate Increase) File No. WR-2020-0275

**ELM HILLS’ RESPONSE TO OPC’S OBJECTION TO NON-UNANIMOUS
DISPOSITION AGREEMENT AND REQUEST FOR AN EVIDENTIARY HEARING**

COMES NOW Elm Hills Utility Operating Company, Inc. (“Elm Hills” or “Company”), by and through the undersigned counsel, and for its *Response* states as follows to the Missouri Public Service Commission (“Commission”):

SUMMARY

Section 393.150, RSMo, court decisions interpreting that statute, and the Commission’s rules as to the Staff Assisted Rate Procedure do not require the Commission to grant a hearing merely because one has been requested. Missouri continues to be a “file and suspend” jurisdiction, allowing the Commission to permit filed tariff sheets to go into effect without a hearing.

The OPC’s late identification of its issue – “overall rate of return calculation” (which may encompass any number of matters) – leaves this case in a position where it will be impossible to provide Elm Hills with appropriate due process as to the hearing of the identified issue (or issues). The Company will have no meaningful opportunity to engage a rate of return expert and conduct discovery as to OPC’s position. Significantly, it will also create additional costs to the customers that are greater than the value of the issues that would be tried, given that Elm Hills will need to engage an expert to testify as to these matters (something it has not done up until this point to

minimize costs) and incur other litigation expenses to try this matter.

The audit performed by the Staff, which supports the Disposition Agreement and includes Staff's calculations and an agreed to capital structure and range of debt and return on equity costs, provides sufficient basis for the Commission to reject OPC's request for hearing, approve the Disposition Agreement, and allow the tariff sheets to go into effect. Accordingly, the Commission should deny OPC's request for evidentiary hearing.

RESPONSE

1. On March 6, 2020, Elm Hills filed notice of its Staff Assisted Rate Case filing under Commission Rule 20 CSR 4240-10.075.

2. The Commission's Staff Assisted Rate Case Procedure is designed to be a collaborative approach between Staff, the filing utility, and the OPC (should it elect to participate) to enable small utilities to apply for and obtain rate relief from the Commission quickly and without incurring significant rate case expenses.

3. Rule 20 CSR 4240-10.075(8) provides "After a small utility rate case is opened, the staff shall, and the public counsel may, conduct an investigation of the utility's request." However, if OPC chooses to participate in the process, its compliance with the Rule's provisions is mandatory.

4. There is no question OPC elected to participate in the Elm Hills rate cases and, once it made that election, OPC was *obligated* to follow all rules governing the Staff assisted rate case procedure. But, as explained herein, OPC failed to comply with the Commission's rule.

5. By this non-compliance with the Commission's rules, OPC made a collaborative resolution of the rate cases impossible. OPC failed to provide meaningful input at the early stages of this case that would have apprised Staff and Elm Hills of issues that concerned OPC. And by failing to provide such input, OPC's behavior ensured that those issues would not be resolved collaboratively, which is the overarching objective of the Staff assisted rate case procedure.

6. Rule 20 CSR 4240-10.075(8)(G) provides "[i]f the public counsel is conducting its own investigation it shall, not later than ninety (90) days after a small utility rate case is opened, provide to all parties a report regarding whatever investigation it has conducted." Despite this requirement, OPC failed to provide the parties a Day 90 report of its investigation. While OPC provided workpapers, there was no explanation as to why it was recommending its proposed adjustments to Elm Hills' requests.

7. Rule 20 CSR 4240-10.075(9)(C) provides:

Not later than ten (10) days after staff provides its settlement proposal, the public counsel, the utility, and any other parties to the case shall notify staff whether they agree with the proposal or, if not, provide any suggested changes and the reasoning for those changes to the parties. Any party suggesting changes shall provide to all other parties any audit workpapers, rate design workpapers, or other documents in its possession that support its suggestions.

(emphasis added). On July 20, 2020, Staff provided Elm Hills and OPC with its Day 120 Settlement Proposal along with the supporting workpapers. Under the Commission's rule, OPC was required to provide a detailed response by July 30, 2020. But OPC provided no such response.

8. On September 9, 2020, Staff filed a Disposition Agreement pursuant to Rule 20 CSR 4240-10.075(11). The disposition agreement provided for a full resolution of the case, but was executed by only Staff and Elm Hills.

9. Rule 20 CSR 4240-10.075(11)(D) requires:

No later than five (5) business days after the filing of a full or partial disposition agreement that is not executed by all parties, each non-signatory party *shall file a pleading stating its position regarding the disposition agreement and the related tariff revisions and providing the reasons for its position.* If the non-signatory party intends to ask that the case be resolved by evidentiary hearing, it must do so in this pleading.

(emphasis added).

10. Further, Rule 20 CSR 4240-10.075(12)(A) requires:

. . . Any request for an evidentiary hearing *shall include a specified list of issues* that the requesting party believes should be the subject of the hearing.

(emphasis added)

11. While OPC did file a cursory objection and request for evidentiary hearing within the required time period, the filing did not state the reason(s) OPC disagreed with the disposition agreement and the reasons for its position. Thus, OPC again failed to comply with the Commission's rules. This failure is recognized by the Commission's September 16, 2020, Order directing OPC to submit a specified list of issues that it believes should be the subject of the hearing. Moreover, even the OPC filing made in response to that Commission order cannot be said to include a "specified list of issues," as it only identifies the "overall rate of return calculation."

12. Rule 20 CSR 4240-10.075(12)(B) states that once a request for an evidentiary hearing is filed, "the regulatory law judge will issue a procedural schedule

designed to resolve the case in the time remaining in the small utility rate case process, *consistent with the requirements of due process and fairness to the parties and the utility's customers....*" (emphasis added). Under Missouri law, a hearing is not required in order for a utility to implement increased rates. Instead, the Commission has discretion to order a hearing or allow rates to go into effect without a hearing. Rule 20 CSR 4240-10.075 reflects this understanding because the rule does not require a hearing if the parties to such case are unable to reach a unanimous settlement. Instead, a non-signatory party may *request* a hearing, but this is not a mandate on the Commission to order an evidentiary hearing.

13. Despite OPC's continued failure to comply with critical elements of the Commission's Staff Assisted Rate Case Procedure rules, OPC requests the Commission schedule an evidentiary hearing in this matter. The rate case timeline mandated by the Staff Assisted Rate Procedure rules requires the case to be submitted to the Commission for decision no later than Day 240, or November 1, 2020. The Commission is then required to issue a final order in this case no later than Day 270, December 1, 2020.

14. This case must be resolved "...consistent with the requirements of due process and fairness to the parties and the utility's customers...." An order granting OPC's request, which would grant the request despite OPC's failures to meaningfully participate in the rate case as required by rule, would certainly violate Elm Hill's due process rights and would be fundamentally unfair. OPC's failure to disclose its issues earlier in the timeline, as required by the Commission's rule, would force Elm Hills to

participate in an evidentiary hearing without adequate opportunity to prepare.

15. The issue identified by OPC on September 18, 2020, “overall rate of return calculation,” encompasses many matters. At a minimum, capital structure, debt cost, and return on equity. While these are issues for which OPC has an in-house witness to use in providing testimony, Elm Hills has no such in-house expert. It will need to engage such a witness (which it has not done previously in hopes of limiting rate case expense). That witness would then have to prepare testimony on a very short timeline, a timeline Elm Hills believes cannot be met.

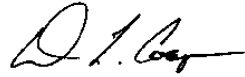
16. Additionally, with only 43 days left in the timeline, Elm Hills would be forced to try issues at an evidentiary hearing without any real opportunity to conduct discovery on OPC’s position. In contrast, OPC has had the opportunity to conduct discovery since shortly after Elm Hills filed its rate increase request. OPC’s late designation of its issues does not justify – and should not be rewarded with – a hearing that violates Elm Hills’ due process rights.

17. Lastly, an evidentiary hearing almost certainly would add significant costs to the revenue requirement that otherwise would have been avoided. And, at least a portion of these costs would be borne by Elm Hills’ customers – the very customers whose interests OPC purports to represent. Any Commission order granting OPC’s request would only reward OPC for its failures to comply and penalize Elm Hills’ customers, while denying due process rights and increasing costs that will eventually be borne in part by ratepayers.

WHEREFORE, Elm Hills Utility Operating Company, Inc. submits this Response

and requests the Commission issue an Order denying OPC's request for an evidentiary hearing.

Respectfully submitted,

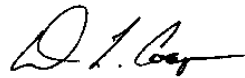


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**ATTORNEYS FOR ELM HILLS UTILITY
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail on this 21st day of September 2020, to all counsel of record.



Dean L. Cooper