

Exhibit No. \_\_\_\_\_  
Issues: Cost of Capital  
Witness: Josiah Cox  
Type of Exhibit: Surrebuttal Testimony  
Sponsoring Party: Elm Hills Utility Operating  
Company, Inc  
File Nos.: WR-2020-0275  
Date: December 2, 2020

**Missouri Public Service Commission**

**Surrebuttal Testimony**

**of**

**Josiah Cox**

**On Behalf of**

**Elm Hills Utility Operating Company, Inc**

**December 2, 2020**

**Table of Contents**

**WITNESS INTRODUCTION..... 1**  
**PURPOSE..... 1**  
**AVAILABILITY OF LONG-TERM DEBT FINANCING FROM COBANK..... 2**  
**RATE CASE EXPENSE ..... 8**

**SURREBUTTAL TESTIMONY OF  
JOSIAH COX  
ELM HILLS UTILITY OPERATING COMPANY, INC.**

1        **WITNESS INTRODUCTION**

2        **Q.     PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3        A.     My name is Josiah Cox. My business address is 1650 Des Peres Road, Suite  
4        303, St. Louis Missouri, 63131.

5        **Q.     ARE YOU THE SAME JOSIAH COX WHO FILED DIRECT TESTIMONY AND  
6        REBUTTAL TESTIMONY IN THIS CASE?**

7        A.     Yes, I am.

8        **PURPOSE**

9        **Q.     WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

10      A.     My surrebuttal testimony will focus primarily on rebuttal testimony of the Office of  
11      the Public Counsel's (OPC) witness David Murray that suggests Elm Hills likely  
12      would be able to obtain low cost, long-term financing from CoBank. Based on my  
13      personal experience and based on my knowledge of a similar attempt by a  
14      company our Louisiana operating affiliate acquired in that state, CoBank  
15      currently is not providing long-term debt financing to small investor-owned water  
16      and wastewater utilities like Elm Hills. My surrebuttal testimony also will update  
17      the Commission on the amount of rate case expenses Elm Hills has incurred to  
18      date and likely additionally will incur through the end of this case as a result of  
19      OPC's request for an evidentiary hearing..

1        **AVAILABILITY OF LONG-TERM DEBT FINANCING FROM COBANK**

2        **Q. PLEASE SUMMARIZE MR. MURRAY'S TESTIMONY REGARDING ELM**  
3        **HILLS' ABILITY TO OBTAIN LONG-TERM DEBT FINANCING FROM**  
4        **COBANK.**

5        A. At page 8, Mr. Murray's rebuttal testimony in this case includes two questions  
6        and answers regarding long-term debt financing CoBank has provided to small,  
7        rural local exchange telephone companies and one Missouri investor-owned gas  
8        utility. Although he never expressly states why this testimony is relevant in this  
9        case, I infer Mr. Murray believes CoBank is a potential source of long-term debt  
10       financing for Elm Hills and perhaps other of Elm Hills' Missouri operating  
11       affiliates.

12       **Q. ASSUMING YOUR INFERENCE IS CORRECT, DO YOU AGREE WITH MR.**  
13       **MURRAY THAT COBANK IS A POTENTIAL SOURCE OF LONG-TERM DEBT**  
14       **CAPITAL FOR ELM HILLS?**

15       A. No, I do not. As I will explain in greater detail later in my testimony, companies  
16       affiliated with CSWR, LLC, (CSWR) applied for debt financing from CoBank in  
17       2017 and CoBank declined to provide the requested financing. I also have  
18       knowledge of a similar financing request by a small wastewater company our  
19       Louisiana affiliate recently acquired in that state. But the result was the same:  
20       CoBank refused the utility's request for debt financing. More recently, I have had  
21       conversations with other small water and wastewater utilities about their  
22       experiences with CoBank and based on those conversations it appears CoBank  
23       remains unable or unwilling to provide long-term financing to such companies.

1 **Q. PLEASE DESCRIBE YOUR PERSONAL EXPERIENCE TRYING TO OBTAIN**  
2 **LONG-TERM FINANCING FROM COBANK.**

3 A. I first met representatives of CoBank in October 2015, while attending the North  
4 American Water Summit. While at that conference, I discussed CSWR's  
5 business model – i.e. acquiring small, oftentimes distressed, water and  
6 wastewater utilities, investing capital necessary to bring those systems into  
7 regulatory compliance, and then operating the systems as investor-owned public  
8 utilities – and asked if CoBank was interested in lending money to finance  
9 necessary system improvements and upgrade to such systems. At that time, the  
10 representatives I spoke to said CoBank was not interested in such loans, but  
11 suggested I contact them again as CSWR's business developed.

12 I next spoke to CoBank in December 2016, while attending that year's  
13 North American Water Business Summit. I again enquired about CoBank's  
14 willingness to lend debt capital to support CSWR's business plan, but I received  
15 the same negative response: CoBank was not interested in making such loans.  
16 The reasons stated were Missouri's backward-looking rate setting methodology  
17 and what CoBank perceived to be an overall negative regulatory environment in  
18 Missouri for small water and wastewater utilities. (At the time, all CSWR's  
19 operations were in Missouri.)

20 I again approached CoBank regarding financing in May 2017. This time  
21 our conversations spanned several months and included my submitting a formal  
22 application for debt financing. But, again, CoBank informed me it was not  
23 interested in making the type of long-term loans I needed and therefore rejected

1 my application. The reasons CoBank gave for its action are summarized in an  
2 email exchange, which is attached to my testimony as **Schedule JC-S1C**.  
3 **Schedule JC-S1C** is marked “Confidential” in accordance with Commission Rule  
4 20 CSR 4240-2.135(2)(A)(4) and (6), as it contains market specific information  
5 and information representing strategies employed in contract negotiations.

6 **Q. IN ADDITION TO THOSE YOU JUST DESCRIBED, HAVE YOU HAD ANY**  
7 **ADDITIONAL CONVERSATIONS WITH COBANK REGARDING LONG-TERM**  
8 **FINANCING FOR ELM HILLS OR ITS AFFILIATES?**

9 A. Yes, I have. In August 2017, I attended a workshop sponsored by the Missouri  
10 Department of Natural Resources (MDNR) and the Environmental Finance  
11 Center Network (EFCN), a group sponsored by the United States Environmental  
12 Protection Agency. The event was entitled “Multi-Funding Workshop for Small  
13 Water Systems,” and it included presentations by representatives of MDNR,  
14 EFCN, the United States Department of Agriculture Rural Development Fund  
15 (USDA), the United States Department of Commerce Economic Development  
16 Administration (EDA), and the Missouri Development Finance Board (MDFB).  
17 The government agencies I just mentioned conveyed a consistent message  
18 during the workshop: they had no funding available for privately-owned water and  
19 wastewater utilities. As an alternative, the agencies suggested investor-owned  
20 utilities seek financing from CoBank.

21 **Q. PLEASE DESCRIBE WHAT ACTIONS YOU TOOK FOLLOWING THE**  
22 **WORKSHOP TO PURSUE FINANCING OPPORTUNITIES DISCUSSED**  
23 **THERE.**

1 A. First, I requested all materials from the workshop, which I received August 24,  
2 2017. These materials included instructions on how to request funds from EFCN,  
3 and I immediately submitted a request for technical assistance with seeking such  
4 funding. In October 2017, EFCN put me in touch with Tom Roberts, one of the  
5 network's representatives. Mr. Roberts is a former President and Chief Operating  
6 Officer of Aqua North Carolina, a regulated, investor-owned water utility, so he is  
7 very familiar with the types of long-term financing water and wastewater utilities  
8 require. Mr. Roberts and I spoke by telephone October 10, 2017, and during that  
9 conversation he told me he was not aware of any funds available to small,  
10 distressed water and wastewater utilities in Missouri. Mr. Roberts followed-up our  
11 conversation with an email transmitting materials for formally requesting technical  
12 assistance from EFCN, but these were the same materials I already submitted to  
13 EFCN the previous August.

14 In his email, Mr. Roberts stated his belief the best option for obtaining low-  
15 cost financing for small, distressed water and wastewater utilities would be to  
16 request the Missouri General Assembly enact legislation changing the rules  
17 regarding the ability of investor-owned utilities to access the state's Revolving  
18 Fund. Mr. Roberts and I also discussed my conversations with CoBank, and  
19 during that discussion Mr. Roberts stated during his tenure as an executive at an  
20 investor-owned utility and continuing through his tenure at EFCN, he had never  
21 seen CoBank make loans to investor-owned water and wastewater utilities even  
22 though CoBank continues to represent it might be able to do so.

1 **Q. ARE YOU AWARE OF SMALL WATER AND WASTEWATER UTILITIES**  
2 **OUTSIDE MISSOURI ATTEMPTING TO OBTAIN DEBT FINANCING FROM**  
3 **COBANK?**

4 A. Yes, I am. Within the past year, Elm Hills's Louisiana affiliate, Magnolia Utility  
5 Operating Company, LLC, (Magnolia) acquired Mo-Dad Utilities, LLC, (Mo-Dad),  
6 a distressed water and wastewater utility in that state. During due diligence  
7 related to that acquisition, I learned Mo-Dad had attempted to secure debt  
8 financing from CoBank, but ultimately was unable to close that financing  
9 transaction because CoBank backed out of the deal.

10 **Q. PLEASE EXPLAIN THE CIRCUMSTANCES OF THE UNSUCCESSFUL**  
11 **FINANCING TRANSACTION YOU JUST DESCRIBED.**

12 A. As I mentioned, Mo-Dad was a distressed water and wastewater utility that prior  
13 to our acquisition suffered from serious environmental compliance issues. In  
14 2016, CoBank represented it could provide financing for improvements Mo-Dad  
15 needed to bring its systems into compliance. In fact, CoBank provided Mo-Dad  
16 with a term sheet for the proposed financing. In support of that financing, in May  
17 2016 Mod-Dad made application for a forward-looking rate increase. The  
18 Louisiana Public Service Commission granted a 69 percent rate increase in  
19 March 2017 (a rate increase to generate the cash flows necessary to create the  
20 loan coverage ratio CoBank indicated it needed to loan the capital necessary to  
21 make improvements required to bring Mo-Dad back into environmental  
22 compliance), and also issued a letter of non-opposition to Mo-Dad's proposed



1 CoBank debt financing. But even after the LPSC-approved rates went into effect,  
2 CoBank refused to close the promised debt financing transaction with Mo-Dad.

3 During 2019 due diligence activities related to the Mo-Dad acquisition, I  
4 spoke to CoBank regarding its unwillingness to provide debt financing. CoBank  
5 informed me its decision was based on a continuing reluctance to involve itself in  
6 financing transactions with investor-owned water and wastewater utilities, even in  
7 jurisdictions that embraced forward-looking ratemaking.

8 **Q. HAVE YOU SPOKEN TO OTHER SMALL WATER AND WASTEWATER**  
9 **UTILITIES WHO EXPERIENCED SIMILAR DIFFICULTY OBTAINING DEBT**  
10 **FINANCING FROM COBANK?**

11 A. Yes, I have. As CSWR engages with small investor-owned water and wastewater  
12 utilities in several different states where we have investigated making additional  
13 acquisitions, the story we consistently hear from these companies is that  
14 CoBank, despite its public representations to the contrary, is unwilling to actually  
15 provide debt financing to small, investor-owned water and wastewater utilities.  
16 And CoBank's reluctance is especially pronounced when the potential borrower  
17 is a distressed utility whose track record also includes net operating losses.

18 **Q. BASED ON YOUR EXPERIENCE AND THE KNOWLEDGE YOU'VE**  
19 **OBTAINED AS A RESULT OF YOUR CONVERSATIONS WITH SIMILARLY**  
20 **SITUATED INVESTOR-OWNED WATER AND WASTEWATER UTILITIES, DO**  
21 **YOU BELIEVE COBANK IS A VIABLE DEBT FINANCING OPTION FOR ELM**  
22 **HILLS?**

1 A. No, I do not. Although we may continue to pursue financing from CoBank,  
2 nothing we have seen over the past several years suggests CoBank can be  
3 counted on as a viable option for debt financing for Elm Hills or any of its  
4 affiliated utility operating companies, especially when the utilities' assets have  
5 been in significant non-compliance with environmental, health, and safety  
6 regulations and the utilities do not have rates in place that produce significant  
7 positive cash flows.

8 **Q. IS THERE ANY EVIDENCE AN INVESTOR-OWNED WATER OR**  
9 **WASTEWATER UTILITY OPERATING IN MISSOURI HAS BEEN ABLE TO**  
10 **OBTAIN DEBT FINANCING FROM COBANK?**

11 A. No, there is no such evidence. In addition to the testimony I provided about my  
12 attempts to secure CoBank financing for CSWR's Missouri affiliates, Elm Hills  
13 DR-8.1(c) asked Mr. Murray to identify each small, investor-owned water or  
14 wastewater utility in Missouri that has been able to secure long-term debt  
15 financing from CoBank. In his response, Mr. Murray stated he "is not aware of  
16 any Missouri investor-owned water or wastewater utility that has obtained long-  
17 term debt financing from CoBank."

18 **RATE CASE EXPENSE**

19 **Q. IS ELM HILLS REQUESTING THE COMMISSION ADD RATE CASE**  
20 **EXPENSE TO THE REVENUE REQUIREMENT THE COMPANY AND STAFF**  
21 **AGREED TO IN THEIR NONUNANIMOUS DISPOSITION AGREEMENT?**

22 A. Yes. Although we have attempted to keep rate case expense at a minimum by  
23 using CSWR employees to the greatest degree possible, as a direct result of

1 OPC's request for an evidentiary hearing in this case we already have incurred  
2 rate case expense of \$17,249, and estimate we will incur additional expense of  
3 \$15,800 through the end of this proceeding. All costs incurred thus far and  
4 through the end of the case are for legal work of our outside counsel at Brydon,  
5 Swearngen and England. Prior to OPC's request for an evidentiary hearing, we  
6 incurred outside counsel costs of \$11,555. Although we would not normally seek  
7 recovery of those costs, because OPC's request for an evidentiary hearing has  
8 delayed implementation of a desperately needed rate increase, we ask the  
9 Commission to include those rate case expenses as well.

10 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

11 **A.** Yes, it does.

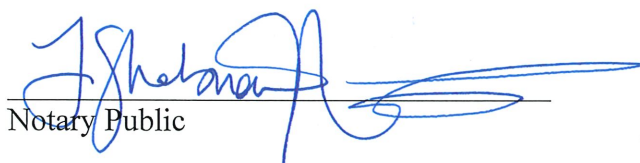
**AFFIDAVIT**

STATE OF MISSOURI     )  
                                  )  
COUNTY OF ST. LOUIS    )     ss

I, Josiah Cox, state I am the President of Elm Hills Utility Operating Company, Inc.; the attached Surrebuttal Testimony was prepared by me or under my direction and supervision; and, the answers to the questions posed in that testimony are true to the best of my knowledge, information and belief.



Subscribed and sworn to before me this 2<sup>nd</sup> day of December 2020.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

1/16/2021  
(SEAL)



F. SHABNAM NOURAI  
My Commission Expires  
Jan. 16, 2021  
St. Louis County  
Commission # 12421180

**SCHEDULE JC-S1C**

**HAS BEEN MARKED**

**CONFIDENTIAL**

**IN ITS ENTIRETY**