

**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)	File No.
Certificate of Convenience and Necessity)	

APPLICATION AND MOTION FOR WAIVER

Under authority of, and in accordance with, Section 393.170, RSMo., 4 CSR 240-2.060, and 4 CSR 240-3.600, Elm Hills Utility Operating Company, Inc. ("Elm Hills" or "Applicant"), asks the Commission to grant this application for a certificate of convenience and necessity ("CCN") to acquire, own, install, construct, operate, control, manage, and maintain water distribution and sewer collection systems for the public. If granted, the requested CCN would extend Applicant's currently authorized water and sewer service areas to include an area in Pettis County, Missouri, near the City of Sedalia.

Because the systems that are subjects of this application each qualifies as a "nonviable utility," as defined by the Commission's rules,¹ and because Elm Hills is a utility with resources sufficient to rehabilitate those systems within a reasonable timeframe, in accordance with 4 CSR 240-10.085 Applicant also seeks an "acquisition incentive,"² a "debit acquisition adjustment,"³ or both with respect to its acquisition and operation of those systems.

Finally, in accordance with 4 CSR 240-4.017(1)(D), Elm Hills moves the Commission for a waiver of the 60-day prefiling notice requirements of 4 CSR 240-4.017(1).

In support of its application and motion for waiver, Applicant states:

¹ 4 CSR 240-10.085(1)(C).

² 4 CSR 240-10.085(1)(A).

³ 4 CSR 240-10.085(1)(B).

Introduction

1. Elm Hills is a Missouri corporation in good standing with its principal office and place of business at 500 Northwest Plaza Drive, Suite 500, St. Ann, Missouri, 63074. Applicant previously filed a certified copy of its articles of incorporation and its certificate of good standing in File Nos. SM-2017-0150 and WM-2017-0151. As authorized by 4 CSR 240-2.060(1)(G), those documents are incorporated into this application by reference. Elm Hills has not filed a fictitious name registration with the Missouri Secretary of State.

2. Elm Hills originally was formed to provide water and sewer service to the public in areas previously served by Missouri Utilities Company ("Missouri Utilities") and State Park Village Sewer, Inc., and Applicant currently is serving those areas under a CCN granted by the Commission in File Nos. SM-2017-0150 and WM-2017-0151. Elm Hills is a "water corporation," a "sewer corporation," and a "public utility" as those terms are defined in Section 386.020, RSMo., and is subject to the jurisdiction and supervision of the Commission, as provided by law.

3. Applicant has no overdue Commission annual reports or assessment fees, and there is no pending action or final unsatisfied judgment or decision against Elm Hills from any federal or state agency or court that involves customer service or rates, which action, judgment or decision occurred within three years of the date of this application.

4. Communications regarding this Application should be addressed to the undersigned counsel and to:

Josiah Cox, President
Elm Hills Utility Operating Company, Inc.
500 Northwest Plaza Drive, Suite 500
St. Ann, MO 63074

Phone: (314) 736-4743
E-mail: jcox@cswrgroup.com

Request for Service Area CCN

5. By law, the Commission may grant a water or sewer corporation a CCN to operate after determining the construction and operation of water distribution or sewer collection systems are either necessary or convenient for the public service.

6. Elm Hills requests a CCN to acquire, own, install, construct, operate, control, manage, and maintain water and sewer systems for the public in a portion of Pettis County, Missouri, known as Stone Creek. The service area Applicant proposes to serve is shown on the map attached to this application as **Appendix A**, and a metes and bounds description of the area is presented in **Appendix B**. Both those appendices are incorporated into this application by reference.

7. The apartments, duplexes, and commercial buildings in the area depicted on **Appendix A** and described in **Appendix B** currently are served by the owner of structures located in that area. That owner/operator, who is not regulated by the Commission, does not have the expertise, resources, or desire to deal with the water and sewer systems, and no utility or other entity, regulated or unregulated, provides services near enough to the Stone Creek area to readily allow customers to be switched to another provider. Numerous deficiencies exist in both water and sewer systems serving the Stone Creek area, and the current owner/operator of those systems is unable or unwilling to make the substantial capital investment necessary – estimated to total almost \$500,000 – to bring those systems up to standard and into compliance with applicable laws and regulations. Those deficiencies include sanitary sewer main lines that are over 50 years old. Elm Hills completed video line work on the sanitary main lines that

demonstrates the need for initial and ongoing investment in the that system. The sewer main lines were partially blocked, had numerous structural failings, and at certain points were so choked with failed line material that the video camera was unable to proceed. The water system has no meters to any individual unit, and water lines serving those units are in need of a water line replacement plan. In addition, the owner/operator of the Stone Creek systems is not currently testing the water distribution system for residual chlorine to ensure customers are receiving safe drinking water service.

8. **Appendix C** is a list of customers currently receiving water or sewer service within the Stone Creek area. That appendix, which is incorporated into this application by reference, is designated “Confidential” in accordance with Commission Rule 4 CSR 240-2.135(2)(A)(1), because names included in the appendix constitute customer-specific information.

9. Applicant has prepared a feasibility study for the Stone Creek systems that includes estimates of revenues, operating expenses, and necessary capital expenditures during the systems’ first three years of operations under Elm Hills’ control. A copy of that study is attached to this application as **Appendix D** and is incorporated by reference. In addition, Applicant has prepared a pro-forma income statement and balance sheet, attached to the application as **Appendix E** and incorporated by reference, showing the financial effects the proposed Stone Hill addition would have on Elm Hills’ consolidated operations. Because the study and the pro-forma financials each include proprietary and competitively sensitive analyses and information, **Appendix D** and **Appendix E** have been designated “Confidential” in accordance with 4 CSR 240-2.135(2)(A)(3) and (6).

10. To serve customers within the Stone Creek area, Elm Hills will not require any franchises or permits from municipalities, counties, or other governmental authorities.

11. If the Commission grants the CCN requested in this application, Elm Hills proposes to continue existing water and sewer rates for all customers, and further proposes to adopt the “standard” PSC Water and Sewer Department sample tariff. However, because current rates do not reflect or fully recover projected costs of providing service, and because Applicant will be required to expend substantial additional capital for upgrades and replacements to current facilities, Elm Hills expects in the near future it will be required to seek Commission approval to increase water or sewer rates charged to customers in the Stone Creek area.

12. The CCN requested in this application will not be detrimental to the public interest of customers in the Stone Creek area, the public in general, or the State of Missouri. Indeed, Elm Hills believes granting its application will promote the public interest, particularly of those customers currently served by the systems Applicant seeks to acquire.

13. Elm Hills is fully qualified, in all respects, to own and operate the systems currently serving the Stone Creek area, and Applicant’s operation of other water and sewer systems in Missouri demonstrate its ability to provide safe and reliable service to customers and to comply with the Commission’s rules, regulations and decisions governing the ownership and operation of such systems.

Request to Treat Stone Creek as a Nonviable Utility

14. To enable it to provide water and sewer service to the Stone Creek area, Applicant plans to purchase all water and sewer assets, property, and real property interests currently used to serve customers. The terms and conditions of that proposed purchase are set out in the September 18, 2018, *Agreement for Sale of Utility System* between Central States Water

Resources, Inc. “Central States”), Elm Hills’ corporate parent, and RAC-JAC Properties Incorporated, which is attached to this application as **Appendix F** and is incorporated by reference. The purchase price and financial terms included in that agreement are fair and reasonable and were agreed to through arm’s-length negotiations. Because that agreement includes competitively sensitive information, **Appendix F** has been designated “Confidential” in accordance with 4 CSR 240-2.135(2)(A)(3) and (6).

15. The water and sewer systems currently serving the Stone Creek area each qualifies as a “nonviable utility” under Commission rules because: 1) they serve fewer than 8,000 customers; 2) they are being operated in violation of the Public Service Commission Law and other federal or state statutes and regulations governing public water and sewer systems; and 3) the current owner is not reasonably expected to make the capital investments necessary to ensure those systems provide safe and adequate service. Therefore, in addition to a CCN, Elm Hills also is seeking an acquisition incentive, a debt acquisition adjustment, or both for the Stone Creek systems it proposes to acquire.

16. Commission rules governing incentives for acquisition of nonviable utilities obligates the party seeking such incentives to provide original records or a reasonable estimate of the original costs of the nonviable utility’s assets and verifying the value of plant-in-service. To comply with that requirement, Central States engaged Flinn Engineering to perform a valuation study of assets used to serve the Stone Creek area, and a copy of that study is attached to this application as **Appendix G** and incorporated into the application by reference. This study provides a reasonable and credible basis for the Commission to conclude the company currently providing water and sewer service to the Stone Creek area is a nonviable utility and also that

Applicant qualifies for an acquisition incentive, a debt acquisition incentive, or both under standards set forth in the Commission's rules. Because the valuation study includes proprietary and competitively sensitive analyses and information, **Appendix G** has been designated "Confidential" in accordance with 4 CSR 240-2.135(2)(A)(3) and (6).

17. Elm Hills and Central States have the managerial, technical, and financial capabilities necessary to own and operate the systems that are subject of this application. They also have access to financial resources necessary to complete necessary upgrades and replacements to those systems within a reasonable period of time. Those companies also have plans for correcting managerial and operational problems that have plagued the Stone Creek systems and for making all required capital improvements.

18. Elm Hills already has completed construction on improvements required under an Agreement on Consent ("AOC") with the Missouri Department of Natural Resources ("MDNR") for two sewer systems and one water system owned by the company. These improvements – which included completely refurbishing an existing drinking water system and making improvements to a sewer lagoon system that was subject to Missouri Clean Water Act pollution fine – brought those systems back into MDNR regulatory compliance. Elm Hills also refurbished and brought into MDNR AOC compliance a sewer system at State Park Village, which had active sludge deposits and parasitic pollution due to the old system's discharge into a receiving stream that directly fed a recreational creek inside Knob Knoster State Park. However, unless the Commission grants the incentives sought in this application, it is unlikely Elm Hills and Central States would be able to acquire the Stone Creek systems and make the upgrades necessary to bring those systems into compliance with applicable laws to ensure they provide safe and adequate service to customers.

Motion for Waiver

19. Commission rule 4 CSR 240-4.017(1) requires “[a]ny person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case.” Because it did not file such a notice within the time period prescribed by that rule, Elm Hills seeks a waiver of the 60-day pre-filing notice requirement.

20. Under 4 CSR 240-4.017(1)(D), a waiver of the pre-filing notice requirement may be granted for good cause. In this regard, Applicant declares, as verified below, that within the 150 days prior to this application Elm Hills has had no communication with the Office of the Commission (as defined in Commission Rule 4 CSR 240-4.015(10)) regarding any substantive issue likely to be in this case. Good cause further exists because health and safety concerns related to an unregulated company continuing to provide water and sewer service in the Stone Creek area could be adversely affected if Applicant is required to delay this filing for 60 days.

21. For good cause shown, Elm Hills therefore moves the Commission for a waiver of the 60-day notice requirement of 4 CSR 240-4.017(1) and acceptance of this application at this time.

WHEREFORE, for the reasons previously stated, Applicant respectfully requests the Commission issue an order granting Elm Hills a CCN; authorizing it to acquire, own, install, construct, operate, control, manage, and maintain water and sewer systems for the public within the area shown in **Appendix A** and described in **Appendix B**; granting Applicant’s request for an acquisition incentive, a debt acquisition adjustment, or both; granting a waiver of the 60-day prefiling notice requirement of 4 CSR 240-4.017(1); and granting Elm Hills such further relief as is just and proper under the circumstances.

Respectfully submitted,



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**ATTORNEYS FOR ELM HILLS UTILITY
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VERIFICATION

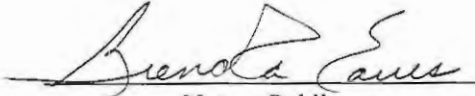
STATE OF MISSOURI)
) ss
COUNTY OF ST. LOUIS)

JOSIAH M. COX, being duly sworn on oath, deposes and says he is the President of Elm Hills Utility Operating Company, Inc.; he has read the foregoing application and knows its contents; and the information contained in that application is true and correct to the best of his knowledge and belief.

ELM HILLS UTILITY OPERATING
COMPANY, INC.

BY: 
JOSIAH M. COX

Subscribed and sworn to before me, the undersigned Notary Public in and for the county and state aforesaid, on the 11th day of February 2019.


Notary Public

My Commission expires: 01/31/21

