

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

In the Matter of the Application of)
Elm Hills Utility Operating Company, Inc.,)
and Missouri Utilities Company)
for Elm Hills to Acquire Certain Water and) File No. _____
Sewer Assets of Missouri Utilities Company,)
For a Certificate of Convenience and Necessity,)
and, in Connection Therewith, To Issue)
Indebtedness and Encumber Assets.)

**APPLICATION AND,
IF NECESSARY, MOTION FOR WAIVER**

COMES NOW Elm Hills Utility Operating Company, Inc. (“Elm Hills”) and Missouri Utilities Company (“MUC”), and, pursuant to 393.170 and 393.190, RSMo, and 4 CSR 240-2.060, 3.305, 3.310, 3.600, 3.605, and 4.020(2)(B), states the following to the Missouri Public Service Commission (“Commission”) as their Application and, if necessary, Motion for Waiver:

BACKGROUND INFORMATION

1. Elm Hills is a Missouri corporation with its principal office and place of business at 500 Northwest Plaza Drive, Suite 500, St. Ann, MO 63074. Elm Hills is a Missouri corporation in good standing. A certified copy of Elm Hills’s certificate of good standing is attached hereto as **Appendix A**. Elm Hills has been formed for the purpose of providing water and sewer service to the public in the area currently served by Missouri Utilities Company and State Park Village Sewer, Inc. Elm Hills intends to be a “water corporation,” a “sewer corporation,” and a “public utility” as those terms are defined in Section 386.020, RSMo, and will be subject to the jurisdiction and supervision of the Commission as provided by law. Elm Hills has no overdue Commission annual reports or assessment fees. There is no pending action or final unsatisfied judgment or decision against Elm Hills from any state or federal agency or

court which involves customer service or rates, which action, judgment or decision has occurred within three years of the date of this Application.

2. Missouri Utilities Company is an administratively dissolved Missouri corporation. Its mailing address is 137 West Franklin Street, P.O. Box 506, Clinton, MO 64735. A copy of Missouri Utilities Company's Administrative Dissolution or Revocation For A For-Profit Corporation is attached as **Appendix B**. Missouri Utilities Company is the holder of Certificates of Convenience and Necessity from the Commission to operate water and sewer utilities in an area of Pettis County, Missouri. Missouri Utilities Company currently provides water and sewer service to 152 locations. Missouri Utilities Company is a "water corporation," "sewer corporation," and "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. Missouri Utilities Company has overdue Commission annual reports or assessment fees which Elm Hills will pay after close of the transaction. There is no pending action or final unsatisfied judgment or decision against Missouri Utilities Company from any state or federal agency or court which involves customer service or rates, which action, judgment or decision has occurred within three years of the date of this Application, other than that mentioned herein.

3. Gary V. Cover was appointed by the Cole County Circuit Court as Receiver for Missouri Utilities Company on August 14, 2006, in the matter of *Public Service Commission of the State of Missouri v Missouri Utilities Company*, Cole County Circuit Court Case No. 06AC-CC00337. Under the Judgment Appointing the Receiver the Court determined that it was not in the best interests of customers that control and responsibility for the utilities developed and owned by Missouri Utilities Company be returned to the owners of Missouri Utilities Company

and therefore directed the Receiver to transfer by sale or liquidate the assets of the utility.

4. Communications in regard to this Joint Application should be addressed to the undersigned counsel and:

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

Attention: Josiah Cox, President
jcox@cswrgroup.com
Phone (314) 238-7316

Missouri Utilities Company
Mr. Gary V. Cover, Receiver
Missouri Utilities Company
Cover & Hilton Law, LLC
137 W. Franklin
P.O. Box 506
Clinton, MO 64735
(660) 885-6780 fax
Email: gary@coverhiltonlaw.com

THE TRANSACTION

5. On September 18, 2015, the Cole County Circuit Court authorized the Receiver to execute an Agreement For Sale of Water and Sewer Systems (“Agreement”), a copy of which is attached as **Appendix C**. Pursuant to the Agreement, Elm Hills proposes to purchase substantially all of the water and sewer assets of Missouri Utilities Company, as specifically described in the Agreement, under the terms and provisions further described in the Agreement. Such assets include the Missouri Utilities Company Certificates of Convenience and Necessity granted by the Missouri Public Service Commission to Missouri Utilities Company in Case No. WA-92-291.

6. Because Missouri Utilities Company is a water and sewer corporation doing business in the State of Missouri, it is subject to the provisions of Section 393.190.1, RSMo,

which states, in pertinent part, that “no . . . water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public . . . without having first secured from the Commission an order authorizing it so to do.”

ADDITIONAL INFORMATION

7. Elm Hills’s verification of authority authorizing the purchase of the subject assets and related transactions contemplated by the Agreement is attached as **Appendix D.**

8. A balance sheet and income statement with adjustments showing the results of the acquisition of the property for Elm Hills is attached as **Appendix E-HC.** Appendix E-HC has been identified as Highly Confidential in accordance with Commission Rule 4 CSR 240-2.135, as it contains market specific information and information representing strategies employed in contract negotiations.

9. The sale of assets should have no impact on the tax revenues of relevant political subdivisions as both Elm Hills and Missouri Utilities Company are private entities and their status as taxpaying entities will not change as a result of this transaction. Missouri Utilities Company is completely located within Pettis County and, to the parties’ knowledge, the political subdivisions within which Missouri Utilities Company’s property sits, do not extend beyond Pettis County.

CERTIFICATE OF CONVENIENCE AND NECESSITY

10. Elm Hills further requests permission, approval and a Certificate of Convenience and Necessity to install, own, acquire, construct, operate, control, manage and maintain a sewer system for the public in an area of Pettis County, Missouri, as set forth on the map attached to this Application as **Appendix F.** This area is generally known as State Park Village.

11. A legal description of the additional area sought to be certificated for sewer is attached to this Application as **Appendix G**.

12. Attached hereto and marked as **Appendix H** is a list of ten residents or land owners within the proposed service area.

13. Attached hereto and marked as **Appendix I** is a feasibility study for the water and sewer systems, including estimated expenses and revenues during the first three years of operation by Elm Hills.

14. Elm Hills will not require any franchises or permits from municipalities, counties, or other authorities in connection with the proposed systems.

15. To provide service to the proposed area, Elm Hills will purchase a sewer collection system from State Park Village Sewer, Inc. A copy of the Asset Purchase Agreement governing this transaction is attached hereto as **Appendix J-HC** (State Park Village Agreement). Appendix J-HC has been identified as Highly Confidential in accordance with Commission Rule 4 CSR 240-2.135, as market specific information and information representing strategies employed in contract negotiations.

TARIFF/RATES

16. Elm Hills proposes to utilize the Missouri Utilities Company rules and regulations and other tariffs currently on file with and approved by the Commission as P.S.C. MO No. 1 water tariff and P.S.C. MO No. 1 sewer tariff, until such time as they may be modified according to law.

17. As to rates, Elm Hills proposes to use the following rates for both the existing MUC customers and the customers in State Park Village:

Sewer - \$45 per month flat rate for all customers;

Water –\$30.51 per month flat rate for all customers.

18. The current sewer rate for State Park is a flat rate of \$45/month. The current sewer rates for MUC (which have been in effect since 2009) are as follows:

UNMETERED –	RATE PER MONTH
Mobile homes in parks and apartments	\$8.80
Single Family Units	\$10.93
Commercial	\$19.40
METERED -	RATE PER MONTH
Minimum (to include 4500 gallons per month)	\$8.80
Plus a usage rate per 1,000 gallons of	\$1.41

19. The current water rates for MUC (which have been in effect since 2009) are as follows:

UNMETERED –	RATE PER MONTH
Mobile homes in parks and apartments	\$6.34
Single Family Units	\$7.92
Commercial	\$14.24
METERED -	RATE PER MONTH
5/8 inch minimum (to include 4500 gallons per month)	\$8.80
3/4 inch minimum (to include 6000 gallons per month)	\$7.92
1 inch minimum (to include 12,000 gallons per month)	\$14.24
Plus a usage rate per 1,000 gallons of	\$1.05

20. While MUC’s tariff provides for both a flat rate and a metered rate, there are no meters in place at MUC. Further, the above MUC rates have been in effect for seven years and do not reflect the current cost of providing service. As evidence of that fact, the Receiver has been unable to pay his fee, PSC assessments, and other charges for several years. Additionally, as indicated below, these systems will require substantial investment after the purchase by Elm Hills that will necessarily result in a rate increase of some amount after those additions have been

completed. Providing for a reasonable and justified rate increase at this time, would act as a phase-in for the customers in advance of the rate case.

CURRENT CONDITION

21. On the wastewater side, Missouri Utilities Company's existing wastewater collection system is conveyed by gravity to an existing lagoon. MUC's lagoon consists of three existing cells inside a sand green golf course run by the local Shriners club. These three lagoons are linked by pipes through the berm system which eventually discharges into a small creek running through the back half of the golf course. The golf course at some point placed berms on each side of this small creek to create a golf course bridge and water feature. This water feature is now acting like a fourth lagoon cell due to the lack of treatment from the existing lagoon. Missouri Utilities Company is currently under a Missouri Attorney General enforcement action for pollution related to the wastewater system. The enforcement action is due to the current lagoon system not meeting Missouri Department of Natural Resources ("MDNR") regulations for pollutant treatment. The existing lagoon is not able to remove BOD5, TSS, NH3, and Fecal Coliform per MDNR regulation and MUC has missed numerous schedules of compliance set by MDNR to rectify these issues. MUC has a previous judgment by the Clean Water Commission for pollution and it is Elm Hills' understanding that MUC's plant has discharged waste without a valid operating permit for at least the last five years. In addition, during Elm Hills inspection no flow could be seen moving between the lagoon cells of the existing system, but flow can still be observed entering the receiving stream, leading to a belief that the existing lagoon is leaking rather than discharging.

22. On the drinking water side, Missouri Utilities Company is supplied by a deep water well connected to a railroad tanker car on cinder blocks that has been converted to a hydro-pneumatic pressure tank serviced by a small pump that is manually turned on to keep the

drinking water lines energized for customer usage. MUC is currently out of compliance for emergency backup and service stability for drinking water. Further, the current railroad tanker car does not have 24 hours worth of available storage for customers, nor does the system have back up power generation for emergencies to keep water pressure to customers during power outages.

23. The State Park Village wastewater system serves three general service areas - two of the areas use lift stations to pump wastewater over a hill toward the existing wastewater plant; and, the third area gravity flows to the existing wastewater plant. State Park's wastewater is currently treated by a small poured-in-place, modified, extended aeration plant. This plant uses an aerated lagoon floating aerator to add oxygen to the plant. The plant has bar screen in the headworks and a chlorine and dechlorinating system on the outfall for disinfection. State Park is currently under a MDNR schedule of compliance and has MDNR violations for four issues:

A) State Park currently has sewer surcharge issues. These surcharges are the result of ground water infiltration and inflow (I&I) and the community's volume of sewer usage. After rain events, the wastewater treatment plant is washed out into the receiving stream sending undertreated waste into the environment. Also during peak usage, such as Sunday mornings, the combined waste generated by the community washes out the plant into the creek;

B) The plant cannot treat peak or daily usage for wastewater constituents NH₃, BOD₅, and TSS. The WWTP is undersized. The WWTP is currently out of compliance for meeting a MDNR imposed timeline to meet these effluent limits;

C) The system has an existing force main sewer conveyance line that is exposed. An internal community lake had a dam subsidence which washed out a road exposing a wastewater line. The line is currently lashed to an old guardrail that is hanging cantilevered over the road

section that was washed out by the lake failure; and,

D) The existing disinfection system is improperly designed, leading to stream discharges of waste that potentially are not properly disinfected.

FUTURE ACTIONS

24. Elm Hills has examined the water and sewer systems and believes that it will be necessary to improve the wastewater system of Missouri Utilities Company by closing down the majority of the existing lagoon cells and keeping the main cell open. The main cell will have sealing work to stop existing leakage. An aerator will be added to lower incoming waste nutrient strength and a moving bed bio reactor (MMBR) will be added to process the remaining waste. A clarifier will proceed the MMBR to further treat existing waste and an ultraviolet disinfection system will remove remaining pathogens. Existing infiltration and inflow (I&I) that cannot easily be fixed will be handled by keeping the existing lagoon open as an I&I basin to prevent the wastewater plant from surcharging.

25. Elm Hills plans on improving the Missouri Utilities Company drinking water system by taking the existing railroad tanker car pressurization tank and deep water well out of service. The tank and well will be replaced with a water main connection to the City of Sedalia. This water main connection will take care of the need for emergency backup and service stability since the City of Sedalia has both.

26. Elm Hills has examined the wastewater system at State Park Village and determined that the existing force-main pump installations and associated 24 hour back up storage tanks will have new pumps and communications equipment installed to allow for synchronized wastewater pumping to reduce surcharges. The exposed wastewater conveyance lines will be buried and re-routed to the WWTP. A new flow equalization basin will be built at the existing WWTP headworks with mechanical screening added to handle additional flow and

allow that flow to be treated by the WWTP on a manageable throughput basis. The existing aeration, lagoon based technology, will be replaced with true mechanical aeration to allow proper waste oxidation. Finally, the existing WWTP tank will add an I-Fast media system for NH3 removal.

27. The total estimated cost of all such improvements is \$1,450,000.

PUBLIC INTEREST

28. For the following reasons, the proposed acquisition of the specified assets of Missouri Utilities Company and State Park Village Sewer, Inc., and the related transactions are not detrimental to the public interest of the State of Missouri and in fact will be consistent with and will promote the public interest:

A. The assets of Missouri Utilities Company and State Park Village Sewer, Inc. would be acquired by Elm Hills and be subject to the jurisdiction of the Commission; and,

B. Elm Hills is fully qualified, in all respects, to own and operate the systems currently being operated by Missouri Utilities Company and State Park Village Sewer, Inc. and to otherwise provide safe and reliable service.

FINANCING

29. The Company also seeks an order from the Commission granting it the authority to issue up to \$1,450,000 of secured indebtedness. The purpose of this financing will be for the purchase of the assets identified above and to fund the construction necessary to bring the systems into regulatory compliance.

30. A Certificate noting on the that the President of the Company is authorized to do all things necessary to consummate the financing transactions contemplated by this Application and as more particularly described herein is included as **Appendix K** and incorporated herein by

reference.

31. Elm Hills intends to execute a Term Loan. The Term Loan will be based on monthly principal and interest payments amortized over 20 years. The Term Loan will allow Elm Hills to complete the acquisition of the Missouri Utilities Company water and sewer systems and State Park Village Sewer, Inc., along with the construction of drinking water and wastewater improvements described above. Attached as **Appendix L- HC** is the term sheet for the Conditional Loan Commitment, which outlines the principal terms of the agreement including the interest rate, applicable fees, and required collateral.

32. The loan will result in a first lien on substantially all of the properties acquired by Elm Hills. Consequently, the loan obligations will be secured by a lien or encumbrance on Elm Hills's utility franchise, plant, and system that is used to provide service to its customers, and also as an encumbrance against additional plant and assets.

33. Marked as **Appendix M-HC** and attached hereto and made part hereof for all purposes, are financial statements with adjustments showing the *pro forma* effect of the contemplated financing. Elm Hills has no capitalization expenditures for the prior five years. The issue is subject to the fee schedule in section 386.300, RSMo.

34. Further, Elm Hills is currently exploring separate, third party equipment financing. If agreement can be reached on that financing, Elm Hills will supplement this Application.

35. Subjecting Elm Hills's operating properties to the lien will not be detrimental to the public interest, and in fact will be beneficial to the public interest because the public health, safety, and welfare will be served by the ability of Elm Hills to obtain financing for the purposes described. The proposed financing transactions will have no material impact on the tax revenues of the political subdivisions in which any of the structures, facilities or equipment of the

companies involved are located.

CONTINGENT REQUEST FOR WAIVER

36. This case is not likely to be a contested case within the meaning of Commission rule 4 CSR 240-4.020(2) because previous applications addressing the same issues presented in this filing have generally not become contested proceedings. However, in the event that the Commission nevertheless concludes that the filing of this Joint Application is likely to be a contested case, Applicants request a waiver of the sixty (60) day notice for good cause shown as permitted by Commission rule 4 CSR 240-4.020(2)(A).

37. Due to the nature of these proposed transactions, it would serve no purpose to wait sixty days before filing the application for Commission approval. Accordingly, to the extent that the Commission may find it to be applicable, the parties request a waiver from the provisions of Commission Rule 4 CSR 240-4.020(2) to allow for the filing of this Joint Application. Lastly, Elm Hills represents to the Commission that it did not engage in any conduct which would have constituted a violation of any ex parte rule or standard of conduct if the notice had been filed pursuant to 4 CSR 240-4.020(2).

WHEREFORE, Elm Hills and Missouri Utilities Company respectfully request that the Commission issue its order:

(A) Authorizing Missouri Utilities Company to sell and Elm Hills to acquire the assets of Missouri Utilities Company identified herein, to include the certificates held by Missouri Utilities Company or, in the alternative grant Elm Hills a new certificates to provide water and sewer service in the area now served by Missouri Utilities Company;

(B) Authorizing Elm Hills and Missouri Utilities Company to enter into, execute and perform in accordance with the terms described in the Agreement attached to this Application

and to take any and all other actions which may be reasonably necessary and incidental to the performance of the acquisition;

(C) Authorizing Elm Hills to enter into, execute and deliver loan agreements as described herein and to incur indebtedness, provided that the aggregate principal amount of all such debt obligations shall not exceed One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000), pursuant to the terms identified herein;

(D) Authorizing Elm Hills to create and make effective a first lien on all of the franchises, certificates of convenience and necessity, plant and system of Elm Hills, to secure its obligations under the loan as provided herein;

(E) Authorizing Elm Hills to enter into, execute, deliver and perform the necessary promissory notes, loan agreements and other documents necessary to effectuate the described financing transactions;

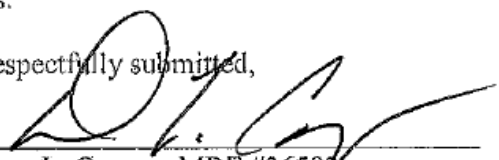
(F) Granting Elm Hills a Certificate of Convenience and Necessity authorizing it to install, acquire, build, construct, own, operate, control, manage and maintain a sewer system for the public within the area currently served by State Park Village Sewer, Inc.;

(G) Granting Elm Hills permission to acquire the assets identified herein of State Park Village Sewer, Inc.; and,

(H) Granting such other relief as may be deemed necessary and appropriate to accomplish the purposes of the Agreements and the Application and to consummate related

transactions in accordance with the Agreements.


Respectfully submitted,



Dean L. Cooper, MBE #36592

BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65012
(573) 635-7166 telephone
(573) 635-3847 facsimile
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**ATTORNEYS FOR ELM HILLS
OPERATING COMPANY, INC.**



Gary V. Cover #28854

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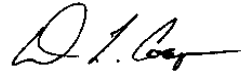
**ATTORNEY AND RECEIVER
FOR MISSOURI UTILITIES COMPANY**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on November 21, 2016, to the following:

Office of the General Counsel
Governor Office Building
Jefferson City, MO 65101
staffcounsel@psc.mo.gov

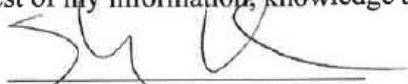
Office of the Public Counsel
Governor Office Building
Jefferson City, MO 65101
opc@ded.mo.gov



AFFIDAVIT

State of Missouri)
) ss
County of St Louis)

I, Josiah Cox, having been duly sworn upon my oath, state that I am the President of Elm Hills Utility Operating Company, Inc. (Elm Hills), that I am duly authorized to make this affidavit on behalf of Elm Hills, that the matters and things stated in the foregoing Application and appendices thereto are true and correct to the best of my information, knowledge and belief.



Subscribed and sworn before me this 22 day of November, 2016.


Notary Public

My Commission Expires: may 20, 2019

CAROL ANN TAYLOR Notary Public - Notary Seal State of Missouri Commissioned for St. Louis County My Commission Expires: May 20, 2019 Commission Number: 15635577

AFFIDAVIT

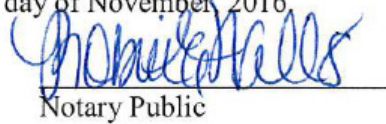
State of Missouri)
) ss
County of HENRY)

I, Gary V. Cover, having been duly sworn upon my oath, state that I am the Court Appointed Receiver for Missouri Utilities Company, that I am duly authorized to make this affidavit on behalf of Missouri Utilities Company, that the matters and things stated in the foregoing Application and appendices thereto concerning Missouri Utilities Company are true and correct to the best of my information, knowledge and belief.



Gary V. Cover

Subscribed and sworn before me this 18 day of November, 2016.



Notary Public

My Commission Expires: 2-5-17

ROBIN E. WELLS
NOTARY PUBLIC-NOTARY SEAL
STATE OF MISSOURI
HENRY COUNTY
MY COMMISSION EXPIRES FEB. 5, 2017
COMMISSION #13497553