

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

In the Matter of the Application of Foxfire)
Utility Company for Authority to Transfer)
Certain Water and Sewer Assets Located in) File No. WM-2022-0186
Stone County, Missouri to Ozark Clean Water)
Company, and in Connection Therewith,)
Certain Other Related Transactions.)

REPLY TO PUBLIC COUNSEL’S RESPONSE IN OPPOSITION TO TRANSFER

COME NOW Foxfire Utility Company (“Foxfire”) and Ozark Clean Water Company (“OCWC”), and, for their *Reply to Public Counsel’s Response in Opposition to Transfer*, states to the Missouri Public Service Commission ("Commission") as follows:

1. On June 28, 2022, Staff filed its *Staff Recommendation* and supporting *Memorandum* and recommended that the Commission approve Foxfire’s application for the sale and transfer of its water and sewer assets to OCWC, subject to the five (5) conditions described in the Staff Recommendation. On July 8, 2022, the applicants filed their response to the Staff Recommendation indicating agreement with the conditions proposed by Staff.

2. On July 8, 2022, the Office of the Public Counsel (“OPC”) filed its *Response in Opposition to Transfer*. Therein, OPC predicates its opposition to the sale of the water and sewer assets of Foxfire to OCWC (an unregulated entity) based on Staff’s concern stated in its *Recommendation* and *Memorandum* that the purchase price of \$1,285,400 exceeds the rate base of \$89,852 reflected in Foxfire’s annual report.¹

3. However, Staff’s comparison of the relationship between the purchase price and net original cost is inaccurate in that it does not include additional investments associated with Foxfire’s infrastructure, including \$23,878.37 in costs relating to repairing its pressure regulation

¹ See Staff’s *Memorandum*, p. 7.

valves, and some \$78,000 in other various maintenance and improvement projects. When the costs associated with these projects are factored into the net original cost, Foxfire's purchase premium (not accounting for depreciation) is in fact closer to six-and-one-half times Staff's estimated rate base, rather than the thirteen times cited by OPC.²

4. More importantly, Foxfire's purchase price is the result of negotiations informed by the buyer and seller's knowledge of the market, including the trend toward consolidation of water and sewer systems, both regulated and unregulated, in this state and others.³ OCWC possesses the experience and data to make an informed decision to purchase at that negotiated price.

5. Additionally, the appropriateness and reasonableness of the negotiated purchase price is supported by previous Commission decisions cited in Staff's *Memorandum* and mentioned in OPC's *Public Counsel Response in Opposition to Transfer*.⁴ In Case No. WM-2017-0186, the Commission approved the sale of the assets of the regulated Lake Region Water & Sewer Company to the unregulated Camden County Public Water Supply District No. 4 with an acquisition premium Staff calculated at approximately \$3.7 million.⁵ In Case No. WM-2015-0231, the Commission similarly approved the sale of assets of the regulated Ozark Shore Water Company to Camden County Public Water Supply District No. 4 for \$5,252,781 where Staff calculated rate base at \$2.9 million.⁶

6. OPC echoes Staff concerns regarding a "close relationship between the owner of Foxfire and the current President of OCWC."⁷ However, a closer look at Case No. WM-2015-

² $\$89,000 + \$23,878 + \$78,194 = \$191,072$ ($1,285,400/191,072 = 6.7$)

³ See response to Data Request #0011, #0015, and #0008 *Purchase Resolution*.

⁴ See p. 7 of Staff's *Memorandum*, and Paras. 2-4 of *Public Counsel Response in Opposition to Transfer*.

⁵ At p. 3.; Staff's *Memorandum*, p. 8.

⁶ At p. 1; Staff's *Memorandum*, p. 8.

⁷ *Public Counsel Response in Opposition to Transfer*, Para. 2.

0231, which Staff cites along with Case No. WM-2017-0186, as dispositive in its decision to not oppose the transfer of Foxfire's assets, reveals that such concerns regarding the relationship between Foxfire and OCWC are unwarranted.

7. In Case No. WM-2015-0231, where the Attorney General intervened to investigate suspected inflated purchase price and self-dealing among Ozark Shores Water Company and Camden County Public Water Supply District No. 4, the Commission found that submitted evidence "support[s] a finding that the District board members had no financial or familial conflict of interest related to [the board's] approval of the transaction, and that the former general manager of the Company and the District did not participate in the valuation analysis and did not attempt to influence the final price of the assets."⁸

8. Similarly, in the instant case, Foxfire owner Rick Helms recused himself from the July 15th, 2019 board meeting in which the acquisition of Foxfire was first discussed,⁹ and resigned from OCWC's board of directors in August of 2019, long before the December 31, 2019 vote to purchase Foxfire's assets at the negotiated price in question.¹⁰ These facts should allay any concerns that the relationship between Foxfire owner Rick Helms and the board of OCWC was improper or resulted in a purchase price that was in any way inflated or ultimately against the interest of the public. Likewise, there were not then, nor are there now, any financial or familial conflicts of interest between Foxfire owner Rick Helms and OCWC President David Casaletto, or any other OCWC officer, regarding the purchase of the assets in question.

9. More importantly, there is no suggestion that the purchase price exceeds fair market value for the sale of assets in this situation. In fact, Foxfire and OCWC note that in Case No. WM-

⁸ At p. 12. Parenthesis added.

⁹ See response to Data Request #0008

¹⁰ See response to Data Request #0007

2022-0246, Rex Deffenderfer Enterprises, Inc. (“RDE”) proposes to sell water assets to the City of Nixa, Missouri for \$2.5 million where the suggested net rate base was only \$332,418.¹¹ That purchase price is seven-and-one-half times higher than the rate base, yet neither Staff nor OPC expressed any objection regarding the transaction price.

10. Finally, OPC’s real concern seems to be the issue of future rates. As noted by Staff, the Commission in Case No. WM-2017-0186, found that “Staff’s concerns about the future rates for the [Camden County Water] District customers may be allayed since the District is a political subdivision that has no motive for seeking profits [and] the District is answerable to voters[.]”¹² Similarly, again, as noted by Staff in its *Recommendation*, “[t]he Commission does not regulate OCWC, nor does it have jurisdiction over OCWC’s board of directors or the future rates set by the board; however, these concerns may be allayed since OCWC has no motive for seeking profits as a nonprofit entity and its directors are answerable to its members.”¹³

11. OCWC is a 501(c)(3) nonprofit organization that was created to own and responsibly manage wastewater and drinking water facilities throughout the Ozarks, protecting water quality and public health. Its mission and its pricing are much different from that of an investor-owned utility. As confirmed by Staff, OCWC is a nonprofit sewer and water company formed in accordance with Sections 393.825 through 393.861, RSMo, and, as such, is not rate regulated by the Commission.¹⁴ Staff further states as follows:

Staff reviewed OCWC’s articles of incorporation (“AOI”) and finds that it was formed in accordance with Sections 393.825 through 393.861, RSMo. MoDNR has no issues with OCWC’s AOI and bylaws. Staff believes that OCWC is legitimately created and operating as a nonprofit sewer utility and nonprofit water utility under state statutes.¹⁵

¹¹ See Appendix A to RDE’s *Application and Request for Waiver* and Staff’s *Memorandum*, p. 4.

¹² At pp. 3-4.

¹³ Para. 16.

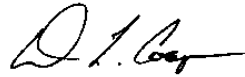
¹⁴ Staff *Recommendation*, p. 3; Staff *Memorandum*, p. 2 of 4.

¹⁵ Staff *Memorandum*, p. 2 of 4.

OPC's concern is no reason to second-guess Missouri's statutory framework and OCWC's place therein.

WHEREFORE, Foxfire and Ozark Clean Water Company submit this *Reply to Public Counsel's Response in Opposition to Transfer* and request the Commission issue an Order approving the sale of Foxfire's water and sewer assets to Ozark Clean Water Company and granting such other relief as may be necessary or appropriate in the circumstances.

Respectfully submitted,



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**ATTORNEYS FOR FOXFIRE UTILITY
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail to the following this 21st day of July, 2022:

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