

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

In the Matter of application of the Public     )  
Funding Corporation of the City of Ozark,     )     Case No. WM-2017-0342  
MO to Sell its Water System Located in     )  
Christian County to the City of Ozark, MO     )

**MOTION TO DISMISS  
CITY OF OZARK’S  
FIRST AMENDED APPLICATION**

COMES NOW the Office of the Public Counsel (“OPC”) and hereby respectfully requests the Public Service Commission (“Commission”) to dismiss the City of Ozark’s First Amended Application in the above captioned matter for the following reasons:

1.     The City of Ozark, who seeks to purchase an LLC named Public Funding Corporation of City of Ozark, Missouri, is a fourth class city. First Amend. Pet. ¶¶1-2.
2.     This Commission’s jurisdiction over the transfer of franchise or property is governed by section 393.190. *See also* Staff Rec. pg. 2, ¶5. Section 393.190 states in relevant part that, “no...water 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...*with any other corporation, person, or public utility.*” (Emphasis added).
3.     The definitions of the terms “corporation,” “person,” and “public utility” are governed by section 386.020, RSMo. Section 393.120.<sup>1</sup>
4.     A “corporation” “includes a corporation, company, association and joint stock association or company.” Section 386.020(11).

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri, as amended.

5. A “person” “includes an individual, and a firm or copartnership.” Section 386.020(40).

6. A “public utility” “includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined by this section...” Section 386.020(43).

7. Accordingly, the City of Ozark, a fourth class city, does not meet the definition of a “corporation,” “person,” or a “public utility.” Therefore, this Commission is not granted authority to oversee the sale of a water system to the City of Ozark pursuant to section 393.190.

8. This position is bolstered by section 386.250(3), which states that “nothing contained in this section shall be construed as conferring jurisdiction upon the commission over the service or rates of any municipally owned water plant or system in any city of this state except where such service or rates are for water to be furnished or used beyond the corporate limits of such municipality.” *See also* Staff Rec. pg. 2, ¶7.

9. Municipally owned water systems are governed by Chapter 91 of the Revised Statutes of Missouri, which this Commission does not have jurisdiction over. That chapter specifically has a section governing how a fourth class city is to acquire a waterworks system. Sections 91.090 & 91.120. Specifically, the City of Ozark must submit the sale to the voters of the city. Section 91.120.

10. Municipally owned water systems may provide water to non-residents. However, such service is still governed by Chapter 91. Section 91.050.

11. Accordingly, this Commission does not have jurisdiction over the sale of an LLC to a fourth class city.

12. The City of Ozark also asks this Commission to enter an Order “authorizing Seller to discontinue providing service in its area and the immediate continuance of service by the Buyer...” That request is premature, in that, in order for the City of Ozark to take over the operations of water service, an election must occur. Until that date, Finley Valley residents need an existing utility to remain in place in order to continue receiving water services. That request should also be denied.

WHEREFORE, OPC respectfully requests that this Commission dismiss the First Amended Application.

Respectfully submitted,

/s/ Curtis Schube

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 9<sup>th</sup> day of January, 2017.

/s/ Curtis Schube