

**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 Stone County,)
Missouri to Ozark Clean Water Company, and in)
Connection Therewith, Certain Other Related)
Transactions.)

File No. WM-2022-0186

STAFF’S RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Recommendation* to **Approve** the Applications pending herein, states as follows.

1. On March 15, 2022, Foxfire filed applications pursuant to Section 393.190, of the Revised Statutes of Missouri (“RSMo”), 20 CSR 4240-2.060, and 20 CSR 4240-10.105 seeking Commission authority to sell its water and sewer assets to Ozark Clean Water Company (“OCWC”).¹ Foxfire also requests to be relieved of its responsibilities as a water and sewer corporation, cancelation of its certificates of convenience and necessity (“CCN”) granted in File No. WA-95-31, and cancelation of its tariff sheets.²

2. The applications were consolidated into one matter on March 16, 2022, which hereinafter is the “Application.”³ Also on March 16, 2022, the Commission ordered the Staff to file a recommendation regarding the Application, or a status report indicating when it will file its recommendation by April 15, 2022.⁴

¹ *Application*, P. 4.

² *Id.* at 4.

³ *Order Consolidating Cases, Directing Notice, and Directing Filing*, P. 2.

⁴ *Id.* at 3.

3. On March 16, 2022, Foxfire filed an amendment to its application indicating paragraph two was incorrect and amended it to state: “Foxfire provides its sewer and water services within the corporate limits of the Village of Indian Point in Stone County, Missouri.”⁵

4. On April 8, 2022, Staff proposed to submit its recommendation by June 14, 2022, and the Commission granted such request on the same date.⁶

5. Also on April 8, 2022, the Commission granted OCWC’s March 15, 2022, motion to intervene in this matter.⁷

6. On June 14, 2022, Staff filed its Motion for an Extension of Time to file its Recommendation, and the Commission approved said request on the same date; whereby, giving Staff until June 28, 2022, to file its Recommendation.⁸

7. Foxfire was certificated by the Commission on March 28, 1995, to provide sewer and water service in Stone County, Missouri, in case number WA-95-31. Foxfire currently provides water and sewer service to approximately 258 customers within this area.

8. Foxfire entered into an agreement with OCWC on December 9, 2019, whereby Firefox offered to sell and OCWC offered to purchase substantially all of the assets of Foxfire for the price of \$1,285,400.00.⁹

⁵ *Amendment to Application*, ¶2.

⁶ *Order Directing Staff Recommendation*, P. 1

⁷ *Order Granting Application to Intervene*, P. 2.

⁸ *Motion for Extension of Time to File Staff Recommendation*, P. 2.

⁹ *Application*, Appendix D, ¶¶ A1-3.

9. Staff has reviewed the corporate documents of both Foxfire and OCWC and finds that OCWC is outside the regulation of the Commission, and that at present does not have a history of major or unusual problems with its operations.¹⁰

10. OCWC is a nonprofit sewer and water company formed in accordance with Sections 393.825 through 393.861, RSMo, and as such is not regulated by the Commission. It is, however, regulated by the Missouri Department of Natural Resources (“MoDNR”).¹¹

11. As explained in the *Staff Memorandum*, attached hereto as Appendix A, Staff reviewed and investigated Foxfire’s request. Based upon this review and investigation, and guided by Commission decisions made in similar cases in the past, Staff is of the opinion that the transaction is not detrimental to the public interest and recommends approval of the transfer of assets from Foxfire to OCWC. However, Staff has some concerns about the transaction.¹²

12. These concerns include the fact of the close relationship between the owner of Foxfire and the current President of OCWC. They were two of the first incorporators and members of the Board of Directors for OCWC, and the owner of Foxfire was a sitting board member of OCWC when he contacted another board member to make an offer to sell Foxfire to OCWC.¹³

13. Further review revealed that there was no negotiation in the purchase price between buyer and seller, and at a \$1,285,400 purchase price, OCWC will be paying an

¹⁰ *Staff Memorandum*, P. 2-4.

¹¹ *Id.* at 2.

¹² *Id.* at 5-8.

¹³ *Id.* at 5-6.

acquisition premium of \$1,195,548, which is thirteen times over the estimated rate base of \$89,852.¹⁴ Without the guidance of those prior Commission decisions referred to above, Staff would recommend disapproval of this transaction for this reason alone.

14. Pursuant to Section 393.190, RSMo, no water or sewer corporation shall sell or transfer its assets without having first secured authorization from the Commission. The Commission must authorize the transfer of a regulated utility's assets, unless the transfer is shown to be detrimental to the public interest.¹⁵

15. In approving the transfer, the Commission must determine that the sale is "not detrimental to the public interest."¹⁶

16. The Commission does not regulate OCWC, nor does it have jurisdiction over OCWC's board of directors or the future rates set by that board; however, these concerns may be allayed since OCWC has no motive for seeking profits as it is a nonprofit entity and its directors are answerable to its members.¹⁷

17. Staff recommends approval of the sale and transfer of the assets subject to the following conditions:

a. Require Foxfire to notify the Commission of closing on the transfer of water and sewer assets to OCWC within five (5) days after closing;

b. Authorize Foxfire to cease providing service immediately after closing on assets;

c. If closing on Foxfire's assets does not take place within thirty (30) days following the effective date of the Commission's order, require Foxfire to submit a

¹⁴ *Id.* at 6-8.

¹⁵ *Environmental Utilities, LLC v. Public Service Comm'n of Missouri*, 219 S.W.3d 256, 265 (Mo. App. W.D. 2007).

¹⁶ See *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 335 Mo. 448, 457-60, 73 S.W.2d 393, 399-400 (Mo. 1934).

¹⁷ See *Love 1979 Partners v. Public Service Comm'n of Missouri*, 715 S.W.2d 482 (Mo. 1986).

status report, in File No. WM-2022-0186 within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until Foxfire determines that the transfer of the assets will not occur;

d. If Foxfire determines that a transfer of the assets will not occur, require Foxfire to notify the Commission of such; and

e. After the above notice of transfer of assets to OCWC is received from Foxfire, cancel the CCN applying to Foxfire's Village of Indian Point service area.

WHEREFORE, Staff prays that the Commission approve the requested sale and transfer of assets as set forth in Foxfire's application, and recommends the Commission require the proposed conditions set forth above, and grant such other and further relief as the Commission considers just in the circumstances.

Respectfully submitted,

/s/ J. Scott Stacey

J. Scott Stacey
Senior Staff Counsel
Missouri Bar No. 59027
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-522-6279
573-751-9285 (Fax)
scott.stacey@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been transmitted by electronic mail to counsel of record this 28th day of June, 2022.

/s/ J. Scott Stacey

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. WM-2022-0186 Foxfire Utility
Company

FROM: Jarrod Robertson, Senior Research/Data Analysis, Water, Sewer and Steam
Department, Industry Analyst Division
Daronn A. Williams, Associate Engineer, Water, Sewer and Steam Department,
Industry Analysis Division
Keith Foster, Utility Regulatory Audit Supervisor, Auditing Department, Business
and Financial Analysis Division

/s/ Jarrod Robertson / June 28, 2022 /s/ Scott Stacey / June 28, 2022
Senior Research/Data Analyst/Date Staff Counsel's Office/Date

SUBJECT: Staff's Recommendation to Approve Transfer of Assets, and Cancellation of
Certificate of Convenience and Necessity

DATE: June 28, 2022

CASE BACKGROUND

On March 15, 2022, Foxfire Utility Company (Foxfire) filed an *Application to Transfer Certain Water and Sewer Assets* ("Application") with the Commission, seeking authority from the Commission for Foxfire to sell and/or transfer certain water and sewer utility assets. Foxfire provides water and sewer services to Lantern Bay, Eagle's Nest, Clear Lake Investments and The Cliffs at Indian Point. These systems are within the corporate limits of the Village of Indian Point in Stone County, Missouri. Foxfire proposes to transfer its systems located at Village of Indian Point in Stone County, Missouri ("System"), to the Ozarks Clean Water Company ("OCWC"). Foxfire also seeks to cancel its Certificate of Convenience and Necessity ("CCN") and certain tariff sheets applying to the System, thereby relieving it of its obligation to provide water and sewer service in this service area.

On March 16, 2022, the Commission issued its *Order Consolidating Cases, Directing Notice, and Directing Filing* (Order), in which it consolidated File No. SM-2022-0187 into File No. WM-2022-0186, with WM-2022-0186 being the lead case; directed that notice be sent to the Stone County Clerk and Commission, local media, and members of the General Assembly representing the affected citizens; and prescribed that any person wishing to intervene in this case should submit an application requesting such by April 5, 2022. OCWC was the only party to file an *Application to Intervene*, on March 15, 2022, and the Commission granted OCWC's *Application to Intervene* on April 8, 2022.

In response to Staff's Status Report, filed April 8, 2022, the Commission filed an *Order Directing Staff Recommendation* setting a deadline of June 14, 2022, for Staff to file its recommendation.

On June 14, 2022, the Commission granted Staff's *Motion for Extension of Time to File Staff Recommendation* and ordered Staff's recommendation due June 28, 2022.

BACKGROUND OF FOXFIRE UTILITY SYSTEM

Foxfire obtained a CCN from the Commission in Case No. WA-95-31, authorizing it to provide water and sewer service within the corporate limits of Stone County, an area known as the Village of Indian Point, near Branson, MO. Foxfire currently provides water and sewer service to approximately 258 customers in this service area, with its principle office located at 3478 Smyrna Road, Rogersville, MO, 65742.

BACKGROUND OF OZARKS CLEAN WATER COMPANY

OCWC is a Missouri nonprofit corporation in good standing with the Missouri Secretary of State. OCWC was incorporated in 2004 as a nonprofit sewer utility within the parameters of Sections 393.825 through 393.861, of the Revised Statutes of Missouri ("RSMo"). As such, OCWC is not subject to regulation by the Commission. Among several other systems it owns and operates, OCWC acquired three (3) of its sewer systems from regulated sewer utilities with approval of the Commission: S.T. Ventures, LLC (SO-2011-0020), Bear Creek Water & Sewer, LLC (SM-2010-0241) and Savannah Heights Industrial Treatment, Inc. (SO-2008-0094), as well as two (2) water systems, Kimberling City Water Company, (WO-2015-0113) and certain Foxfire water assets, (WM-2016-0094). Across the aforementioned OCWC systems, OCWC serves a combined 2,380 service connections for both water and sewer.

Per communications between Staff and the Missouri Department of Natural Resources ("MoDNR"), within the scope of this investigation, MoDNR relayed to Staff there are no outstanding concerns with service issues at any of the current OCWC-run systems.

Under the provisions of Section 393.829(15), RSMo, nonprofit sewer utilities may also provide services and assume responsibilities of nonprofit water utilities, which OCWC is exercising in this matter.

STAFF'S INVESTIGATION

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.

Staff's investigation included the review of documentation from the MoDNR which included the site's permits (Permit to Dispense ("PTD") for drinking water and the Missouri State Operating Permit ("MSOP") for their wastewater services), and the last inspection report for the water and wastewater systems. MoDNR's last inspection of the drinking water system was on January 27, 2022. MoDNR's last inspection of the wastewater system was on December 5, 2019. Staff's investigation of the water and wastewater systems are detailed in the following water and wastewater sections, respectively.

Water System

Foxfire operates under PTD Permit No. 5071085 and, per MoDNR records, provides water from a well that was drilled in 1993 to a depth of 1,395 feet with six-inch casing to a depth of 539 feet. MoDNR records further state the 75-horsepower submersible pump is rated at 240 gallons per minute. The system provides voluntary treatment by injecting sodium hypochlorite (liquid chlorine) before storage. In addition to disinfection, the chlorine also limits iron in the water. Pressure, detention, and storage are provided by an 89,000-gallon standpipe. The chlorination pump and solution tank are located in a separate room within the well house. Per the drinking water inspection report, from January 27, 2022, the average water usage in January 2022 was 40,962.5 gallons per day. The maximum water production is 345,600 gallons per day, if the pump is ran at full capacity.

During the January 27, 2022, drinking water inspection, one unsatisfactory finding was found: back flow preventer testing records for the last year were missing. This was rectified by the Foxfire owner e-mailing copies of the records to the responsible party. The report further details the following recommendations:

1. The public water system does not have an adequate tank interior inspection and cleaning program.
2. The public water system does not have security fencing around the storage tank.
3. The public water system does not have adequate emergency electrical power.

OCWC may want to consider these recommendations. Per OCWC's response to Data Request No. 0001, upon ownership, it does not plan to make any repair or improvements immediately.

MoDNR's Drinking Water Watch web site was also used to check for drinking water violations. Per this web site, there has not been any major violation for this drinking water system.

Lastly, Staff conducted a site inspection of the facility on March 31, 2022. Staff met with Foxfire's current owner, Garah "Rick" Helms, and its MoDNR certified water and wastewater operator, Tim Thorson of Ozarks Environmental Services, Inc. ("OES"). According to Mr. Helms, most of the water mains were installed from 1993 to 1995. Per their 2021 PSC Annual Report, these mains are constructed of polyvinyl chloride ("PVC") piping and includes 2,785 feet of six-inch and 14,665 two-inch PVC piping. In addition, Mr. Helms stated the standpipe was recoated in 2019 and the roofing to the well house was recently replaced. Plumbing and the pump inside the well house was painted in 2020. Overall, the water system was in good condition. However, the chlorine room did not have a fan installed, which is a common practice for safety. For safety reasons, OCWC may want to investigate the addition of a safety fan in the chlorine room.

Wastewater System

MoDNR last inspected the wastewater system on December 5, 2019. This inspection resulted in an inspection report dated December 30, 2019. The system operates under MSOP MO0115096,

which was issued on February 1, 2019, and expires on September 30, 2023. This wastewater treatment facility is composed of an activated sludge sequencing batch reactor with chemical addition to facilitate phosphorus removal, aerated sludge holding and ultraviolet disinfection. Sludge is disposed of by a contract hauler four or five times per year. Per the MSOP, the system has a design flow capacity of 120,000 gallons per day and has an actual flow of 15,300 gallons per day. In addition, discharge from this facility flows into a tributary to Table Rock Lake. The facility has a design population equivalent of 1,494. As previously stated, Foxfire currently serves approximately 258 customers, so capacity is not an issue.

The MoDNR inspection report, dated December 30, 2019, shows the wastewater treatment facility to be in compliance with the Missouri Clean Water Law, its implementing regulations, and MSOP MO0115096. There were no unsatisfactory findings or recommendations.

Upon reviewing the system's Discharge Monitoring Reports for the last five years, just a handful of violations were present. The most recent violations were due to MoDNR not receiving nitrogen and phosphorus data for the period ending September 30, 2021. In addition, the aluminum limit was exceeded in 2020 and the phosphorus limit was exceeded in 2019. Foxfire experienced a wet weather bypass (overflow) on December 20, 2021, that resulted in approximately 20,000 gallons of untreated wastewater and sludge going into a tributary to Table Rock Lake. As a result of this overflow, a Notice of Violation ("NOV") No. SW21173 was issued to Foxfire. Mr. Thorson responded in writing to MoDNR and the issues that led to the overflow were corrected.

Staff conducted a site inspection of the wastewater treatment facility on March 31, 2022. Staff met with Foxfire's current owner, Rick Helms, and its water and wastewater operator Tim Thorson of OES. According to Mr. Helms, most of the wastewater collection system was installed from 1993 to 1995, just as the distribution piping. Per its 2021 PSC Annual Report, the collection system is constructed of PVC piping and includes 286 feet of four-inch force piping and 2,436 feet of eight-inch gravity piping. During this inspection, Mr. Helms mentioned a number of recent improvements made to the Foxfire wastewater system, including new control panels, various valves, new roofing to the wastewater treatment building, and replacement of fencing pickets. It is Staff's opinion that the wastewater plant has been well maintained and is in good condition.

RATE IMPACT

The current rates approved by the Commission for the systems, in effect since December 2002, are as follows:

- Residential water utility customers on a 5/8" meter pay a fixed monthly rate of \$20.10 (includes 2,000 gallons of usage) and an additional commodity charge of \$1.36 per 1,000 gallons beyond the first 2,000 gallons.
- Residential sewer utility customers on a 5/8" meter pay a fixed monthly rate of \$40.22 (includes 2,000 gallons of usage) and an additional commodity charge of \$3.21 per 1,000 gallons beyond the first 2,000 gallons.

OCWC states that it has no plans at present to change rates applying to the System. OCWC will undertake its own evaluation of rate needs based on its actual cost of service, including consideration of future capital investments it might see fit to undertake. In accordance with its bylaws, rate adjustments for customers are addressed by majority vote of the OCWC Board of Directors, who are elected from the membership.

CUSTOMER NOTICE

With the input of Staff, Foxfire prepared a notice of this proposed transfer to send to the systems' customers. A copy of the notice and a statement saying notices were mailed to each of the affected customers on April 11, 2022, was included as a supplemental response to Data Request No. 0005, and is included as Attachment A to this memorandum. Staff has received no public comments from customers as of the time this memorandum was prepared. Staff believes that no further special customer notice nor a local public hearing are necessary.

THE TRANSACTION

Staff reviewed the *Application* and filings on the Missouri Secretary of State's website and issued several Data Requests to the purchaser, OCWC, as well as a few to the seller, Foxfire. Although Staff is not opposed to the acquisition, it has concerns about the nature of the transaction and the Commission should be aware of these concerns as described in the following paragraphs.

The owner of Foxfire, Garah "Rick" Helms, was both an incorporator and one of the first directors of OCWC when it was formed as a Nonprofit Sewer Company on February 11, 2004. (See the *Articles of Incorporation* filed with the Missouri Secretary of State on February 17, 2004.) Based on documents filed with the Missouri Secretary of State, before Foxfire's merger with English Village Not-for-Profit Sewer Corporation (English Village), Mr. Helms was President of OCWC from at least 2005 through 2008, a board member from 2012 through 2013, and then Secretary from 2014 through 2017. English Village, formed on March 19, 2002, merged with OCWC on August 29, 2017, with English Village being the surviving corporation, although, after the merger, the name would be changed to OCWC. (See the *Articles of Merger* provided in OCWC's response to DR No. 0004, filed with Missouri Secretary of State on October 25, 2017.) Mr. Helms is listed as a member of the board of directors for OCWC with his term ending June 2020 in the *Plan of Merger* attached to the *Articles of Merger* with English Village. Mr. Helms continued as a sitting board member of OCWC until he submitted his resignation on August 19, 2019. (See attachment to OCWC's response to Data Request No. 0007.) At the time of his resignation, Mr. Helms was also the Secretary to the Board.

The current President of OCWC, David Casaletto, was also an incorporator and one of the first directors of OCWC. (See the *Articles of Incorporation* filed with the Missouri Secretary of State on February 17, 2004.) Based on a review of OCWC's Annual and Biannual Registration Reports (Nonprofit) filed with the Missouri Secretary of State, Mr. Casaletto was Treasurer from at least 2005 through 2008, and then President from 2009 through at least 2021 (the most recent filed report).

On or before July 10, 2019, while a director and secretary of OCWC's Board of Directors, Mr. Helms called David Casaletto, the President of OCWC, "to let him know that the Lantern Bay property was available for purchase and, that while he had received another offer, his desire was that OCWC be given first shot." (See OCWC's response to Data Request No. 0013.) Five days later, on July 15, 2019, the OCWC board met and approved the purchase of Foxfire's Lantern Bay water and sewer systems. Although there was no overall change in the total purchase price, the terms of this board-approved purchase changed when, at a September 9, 2019, OCWC board meeting, President Casaletto informed the board that the purchase date would have to be pushed out 3-4 years due to a potential tax liability. According to Foxfire's response to Data Request No. 0016, a change in its "Federal Tax Status from a 'C' Corporation to an 'S' Corporation effective January 1, 2018," triggered an unexpected "five-year 'lookback' on capital gains tax on any assets sold by the company" that necessitated moving the effective date of the sale to OCWC until after January 1, 2023, the expiration date of the "lookback." On December 9, 2019, the OCWC board approved a resolution "to enter into a contract for the purchase of the assets of Foxfire Utility Company" on or before January 12, 2023. (See attachments to OCWC's response to Data Request No. 0008.)

Staff is concerned that Mr. Helms, as owner of Foxfire, was a sitting board member of OCWC at the time he contacted another board member to make an offer to sell Foxfire to OCWC. In addition, Staff is concerned about the long-term relationship between Mr. Casaletto and Mr. Helms, who were both incorporators and shared several years together on the board of directors of OCWC. On the other hand, Mr. Helms is owner-financing the transaction over 20 years with low equity and a below-market interest rate of 2.5%.

Staff submitted Data Request No. 0015 to Foxfire to understand how the owner-offered sales price was determined. Foxfire's response implied there was not any negotiation between the buyer and the seller. "There was no 'calculation' of a purchase price. The purchase price was an agreed-to price between a buyer and a seller based on their respective knowledge of the market."

If the Commission approves the *Application*, as far as Staff has been able to determine, it will be the first Commission acquisition case involving OCWC with a purchase price over \$10. The following are the prior cases:

- SO-2008-0094 – Savannah Heights Industrial Treatment, Inc. would sell its sewer system to Table Rock Lake Community Service, Inc. (TRLCS) who, in turn, would transfer ownership to OCWC. Savannah Heights agreed to pay TRLCS \$30,000 for a lift station upgrade and TRLCS agreed to pay Savannah Heights \$10 at closing. The Commission approved the *Application* on December 6, 2007, with a December 16, 2007, effective date (EFIS Item No. 7).
- SM-2010-0241 – Bear Creek Water & Sewer, LLC (Bear Creek) would sell its sewer system to TRLCS who would immediately transfer the ownership to OCWC. No purchase price between TRLCS and Bear Creek was provided, but OCWC agreed to pay TRLCS \$10 at closing. The Commission approved the *Application* on August 25, 2010, with a September 4, 2010, effective date (EFIS Item No. 12).

- SO-2011-0020 – S. T. Ventures, LLC (STV) would sell its sewer system located in Taney County, Missouri to TRLCS who, in turn, would transfer ownership to OCWC. No purchase price by any party was stated. The Commission approved the *Application* on October 27, 2010, with a November 6, 2010, effective date (EFIS Item No. 9).
- WO-2015-0113 – Kimberling City Water Company (KCWC) would be donated to the Upper White River Basin Foundation, Inc. (UWRB), a Missouri non-profit corporation who, in turn, would transfer ownership to OCWC. KCWC agreed to pay UWRB \$6,000 to “use in initial rehabilitation, repair, and upgrades.” The Commission approved the *Application* on January 21, 2015, with a February 20, 2015, effective date.
- WM-2016-0094 – Foxfire Utility Company would donate its Spring Branch water system to UWRB who, in turn, would immediately transfer ownership to OCWC. No purchase price by any party was stated. The Commission approved the *Application* on December 16, 2015, with a December 26, 2015, effective date. Noticeably, this case was not mentioned in paragraph 10 of Foxfire’s current *Application*, which listed similar transactions approved by the Commission.

Normally, in cases involving a regulated utility’s proposed acquisition of another water and/or sewer utility, Staff would calculate an estimated rate base, which Staff would expect the purchasing utility to use the next time it submitted a rate case to the Commission. In addition, Staff would use this estimated rate base to determine the reasonableness of the transaction and whether or not there was an acquisition premium that should not be included in customer rates. Since this acquisition involves a non-profit, non-regulated utility, Staff did not perform a typical rate base calculation. However, Staff notes, that according to Foxfire’s Commission-filed 2021 Annual Report, at December 31, 2021, the net water plant-in-service was \$63,979 and the net sewer plant-in-service was \$42,721, for a total net plant-in-service of \$106,700. No Contributions in aid of Construction (CIAC) were reported for either system to include in rate base. As such, the net plant-in-service would be considered rate base at \$106,700. Since the actual purchase would not occur until January 2023, the net plant and, therefore, rate base, would be reduced by a full year of depreciation to December 31, 2022. This would reduce rate base by \$7,948 for water and \$8,900 for sewer, for a revised combined rate base of \$89,852. At a \$1,285,400 purchase price, OCWC will be paying an acquisition premium of \$1,195,548, more than thirteen (13) times over the estimated rate base.

In recommending approval of the sale, Staff relies on previous guidance provided by the Commission¹. In situations where a utility is being purchased by an entity that is not regulated by the Commission, the Commission previously approved transactions where affiliation exists between the parties. The Commission has also approved transactions with a significant acquisition premium, finding that customers must utilize other protections, such as voting out board members if they are displeased. In WM-2015-0231 the purchase price was \$5.2 million, whereas the rate base was \$2.9 million. Staff recommended disapproval of the application because of the

¹ WM-2017-0186 Lake Region Water & Sewer Company, WM-2015-0231 Ozark Shores Water Company

acquisition premium and the close relationship between the purchaser and the seller. In WM-2017-0186 Staff again recommended disapproval of the application, where the purchase price of \$6 million was 155% above the rate base of \$2.4 million, and a close relationship again existed between the purchaser and the seller. In both of those cases the Commission granted the applications. Staff remains concerned about any transactions that include an acquisition premium that could ultimately be borne by ratepayers. Staff is also very concerned that although the seller abstained from voting on the acquisition, he was a member of the board that approved the purchase of his system. Absent previous Commission guidance, Staff would not recommend approval of this application. Staff has included the above to document the results of its investigation, and to provide information to the Commission.

OTHER ISSUES

Foxfire has no delinquencies with regard to filing its annual reports through calendar year 2021, as documented on the Commission's Electronic Filing and Information System (EFIS). Foxfire has paid annual assessments through all of fiscal year 2021, as posted by the Commission's Administration Division on its assessment ledgers. Both OCWC and Foxfire are Missouri Corporations, active and in good standing with the Missouri Secretary of State.

Foxfire has no pending action or final unsatisfied judgement or decision against it from any state or federal agency or court that involves customer service or rates, which action, judgement or decision has occurred within the last three (3) years. Foxfire has no overdue Commission annual reports or assessment fees. Foxfire has no cases pending before the Commission which will impact the outcome of this application.

STAFF'S RECOMMENDATIONS AND CONCLUSIONS

Staff reviewed corporation documents and takes the position that the OCWC Board of Directors properly created a nonprofit sewer utility. Based upon previous Commission findings, Staff takes the position that the proposed sale and transfer of assets from Foxfire to OCWC is not detrimental to the public interest, and therefore recommends approval. While OCWC is not subject to the jurisdiction of the Commission, OCWC is led by a board of directors elected by the customers, who oversee and control the operations of OCWC, and preside over any customer issues. Staff also recommends that following the completed transfer to OCWC, the Commission cancel the CCN applying to the System.

STAFF'S RECOMMENDATIONS

Based upon the above, the Staff recommends that the Commission:

1. Approve the transfer of water and sewer utility assets, as requested;
2. Require Foxfire to notify the Commission of closing on the transfer of water and sewer assets to OCWC within five (5) days after such closing;
3. Authorize Foxfire to cease providing service immediately after closing on the assets;

4. If closing on Foxfire's assets does not take place within thirty (30) days following the effective date of the Commission's order, require Foxfire to submit a status report, in File No. WM-2022-0186 within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until Foxfire determines that the transfer of the assets will not occur;
5. If Foxfire determines that a transfer of the assets will not occur, require Foxfire to notify the Commission of such; and
6. After the above notice of transfer of assets to OCWC is received from Foxfire, cancel the CCN applying to Foxfire's Village of Indian Point service area.

Attachments:

- A) Customer Notice

Foxfire Utility Company, Inc.

P.O. Box 610

Ozark, MO 65615

417 521 8287

e-mail: letsdig@live.com

April 11, 2022

To: All Customers of Foxfire Utility Company

VIA: USPS

Dear Customer:

This is to provide you with notice of Foxfire Utility Company's intent to transfer the Water and Sewer facilities currently serving Lantern Bay, Eagle's Nest, Clear Lake Investments and The Cliffs at Indian Point to Ozarks Clean Water Company (OCWC). This asset transfer requires the approval of the Missouri Public Service Commission (PSC). An application for approval of the transfer of assets was filed with the Missouri Public Service Commission on March 15, 2022 (Case No. WM-2022-0186).

The Staff of the PSC will review the proposed transaction and file its recommendations with the Commission at a later date.

As a potential future customer of Ozarks Clean Water Company, you should be aware of the following:

- OCWC is a Missouri non-profit corporation with its principal office and place of business located at 11 Oak Drive, P.O. Box 973, Kimberling City, Missouri 65686.
- OCWC is a Missouri 501(c)(3) water and sewer corporation that was formed in March of 2004 for the specific purpose of owning and operating individual and clustered wastewater systems.
- OCWC was formed in accordance with sections 393.825 to 393.861 of the Missouri Revised Statutes. OCWC is a not-for-profit corporation with voluntary membership. Membership is gained by applying for and receiving services from OCWC.
- The Missouri Department of Natural Resources (MoDNR) has approved OCWC as an acceptable entity to receive funding from the State Revolving Fund, which is a low interest loan program.
- While not subject to the jurisdiction of the Commission if the transfer is approved, OCWC is subject to adhering to MoDNR and United States Environmental Protection Agency (EPA) regulations.

- OCWC currently owns and operates 13 public water systems serving approximately 409 customers and 24 sewer treatment systems serving approximately 2,166 customers. OCWC is a highly capable and proven successful owner and operator of water and sewer systems in Southwest Missouri.
- OCWC will utilize the same operation and maintenance provider and staff currently used by Foxfire. There will be no change in the quality of service provided to customers or the facilities.
- OCWC policies, procedures and rates are set by majority vote of the OCWC Board of Directors. Directors are elected in accordance with OCWC by-laws from the membership of the Company. Because the membership controls the Company, it and other not for profit utilities are exempt from regulatory oversight by the PSC.
- Upon completion of the transfer of assets, OCWC will keep all existing rates and charges in effect for at least 12 months following closing on the transfer. This includes connection charges.
- Several conveniences to current Foxfire customers will be available after the transfer, including e-mail billing, ACH automated payments, online access for payments and account history, text alerts, a nearby office location and dropbox for payments.
- After the transfer is complete, the certificate to own and operate the water and sewer systems will be vacated. After certain follow up actions are completed, Foxfire Utility Company will be dissolved.

You may provide comments to the MoPSC Staff or the Office of the Public Counsel at the following addresses:

Public Service Commission
 Attn: Water/Sewer Dept.
 P.O. Box 360
 Jefferson City, MO 65102
 Phone: 800-392-4211
 Fax: 573-751-5562

Office of the Public Counsel
 P.O. Box 2230
 Jefferson City, MO 65102
 Phone: 866-922-2959
 Fax: 573-751-1847

E-Mail: watersewercomments@psc.mo.gov

E-Mail: mopco@opc.mo.gov

To submit your comments via the Commission's Website:

- (1) Go to <http://www.psc.mo.gov>;
- (2) Click on the Submit Comments box under the “How Do I...” heading on the right top of the page.
- (3) From this page click on the "Submit Comment" link found under “Submit Comments in Writing”; and

(4) Fill out and submit the Public Comments form, including **Case No. WM-2022-0186**. If you want to attach a document, before clicking the “Submit” button, click the “Attach” button. There are instructions on that page for attaching the document and returning to the previous screen.

(5) Click the “Submit” button at the bottom of the page.

It has been a pleasure to own and operate Foxfire Utility Company and we have appreciated having you all as our customers. We have always taken pride in providing safe and reliable water and sewer service and wish to assure you all that OCWC will do that as well.

Garah F. (Rick Helms)
President, Foxfire Utility Company

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

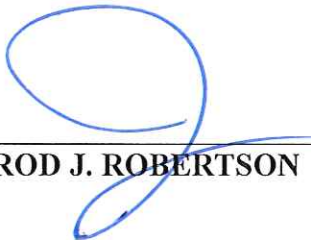
In the Matter of the Application of)	
Foxfire Utility Company for Authority to)	Case No. WM-2022-0186
Transfer Certain Water and Sewer Assets)	
Located in Stone County, Missouri to)	
Ozark Clean Water Company, and in)	
Connection Therewith, Certain Other)	
Related Transactions)	

AFFIDAVIT OF JARROD J. ROBERTSON

STATE OF MISSOURI)	
)	ss.
COUNTY OF COLE)	

COMES NOW JARROD J. ROBERTSON and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation* in Memorandum form; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.



JARROD J. ROBERTSON

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 28th day of June 2022.

D. SUZIE MANKIN Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: April 04, 2025 Commission Number: 12412070


 Notary Public

