

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

In the Matter of Foxfire Utility Company for            )  
Authority to Transfer Certain Water Assets            )  
Located in Benton County, Missouri to Upper        )  
White River Basin Foundation, Inc. and, in            )  
Connection Therewith, Certain Other Related        )  
Transactions    )

**File No. WM-2016-0094**

**STAFF RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and, as directed by the Commission's *Order* of October 28, 2015 hereby recommends that the Commission **GRANT** the *Application* filed herein by Foxfire Utility Company, subject to the conditions set out in Staff's attached *Memorandum*.

Respectfully submitted,

**/s/ Jamie S. Myers**

Jamie S. Myers  
Missouri Bar Number 68291  
Staff Counsel  
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Missouri Public Service Commission  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by hand delivery, electronic mail, or First Class United States Mail, postage prepaid, to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, on this 25<sup>th</sup> day of November, 2015.

**/s/ Jamie S. Myers**

## MEMORANDUM

TO: Missouri Public Service Commission Official Case File  
File No. WM-2016-0094  
Foxfire Utility Company, Inc.

FROM: James A. Merciel, Jr. – Water and Sewer Unit

/s/ James A. Merciel, Jr.                      November 24, 2015  
Case Coordinator                                      Date

/s/ Kevin Thompson                              November 24, 2015  
Staff Counsel    Date

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

DATE: November 24, 2015

### CASE BACKGROUND

On October 22, 2015, Foxfire Utility Company (Foxfire) filed an *Application and, if Necessary, Motion for Waiver (Application)* with the Commission, seeking authority from the Commission for Foxfire to transfer certain water utility assets. It proposes to transfer its "Spring Branch" service area system in Benton County to Upper White River Basin Foundation, Inc. (UWRBF), which according to the *Application* will immediately transfer the assets to the Ozarks Clean Water Company (OCWC). Foxfire also seeks, after the transfer of assets is accomplished, to cancel its Certificate of Convenience and Necessity (CCN) and certain tariff sheets applying to the Spring Branch service area, thereby relieving it of its obligation to provide water service in this service area.

On October 28, 2015, the Commission issued its *Order Directing Notice, Setting Deadline For Intervention and Directing Staff To File A Recommendation (Order)*, in which it directed that notice be sent to the Benton County Commission, local newspapers, members of the General Assembly representing the affected citizens, and the General Counsel of the Missouri Department of Natural Resources (DNR), and prescribed that any person wishing to intervene in this case should submit an application requesting such by November 23, 2015. No parties sought to intervene by this prescribed date. Additionally in this *Order*, the Commission directed Staff to submit a recommendation regarding this case no later than November 30, 2015.

### BACKGROUND OF THE INVOLVED PARTIES AND THE UTILITY SYSTEM

Foxfire first obtained a CCN from the Commission in Case No. WA-95-31, authorizing it to provide water and sewer service in an area known as Lantern Bay, a condominium development near Branson West, MO in Stone County. Foxfire reported 243 metered water customers and 239 sewer customers in its 2014 annual report for the Lantern Bay area.

Foxfire later obtained a CCN in Case No. WA-2001-53 to provide water service in Spring Branch. Foxfire reported 98 unmetered water customers in its 2014 annual report for its Spring Branch area. The Spring Branch water system pre-dates its ownership by Foxfire; its actual age is unknown to Staff

but it likely dates to the 1970s when the area is believed to have been developed. This water system did not have an operating permit from DNR when Foxfire acquired it, and it likely was constructed with neither the approval of DNR, nor the Missouri Department of Health which regulated drinking water systems prior to the creation of DNR in 1974. Three wells are utilized as the sources of supply, each with production capacity of approximately 20 to 25 gallons per minute. Chlorine disinfection is utilized at each well. Pressurized bladder tanks are located at each well location to normalize pressure. The distribution system consists of poly vinyl chloride (PVC) pipe of 2 inch diameter or less. There are no meters on customer service lines.

Included with the *Application* is an *Agreement for Donation of Water System*, which is an agreement between Foxfire and UWRBF, and which contemplates a transfer as a “donation” only of Foxfire’s Spring Branch water system assets. If this transfer is approved and these assets transferred as proposed, then Foxfire will remain a regulated water and sewer utility providing service in its Lantern Bay service area.

UWRBF is a charitable nonprofit corporation that exists for the purpose of promoting water quality in the White River watershed, affecting Table Rock Lake and other lakes and streams in the area. Its business activities include public education, research, promoting public policy and undertaking or coordinating improvement projects that enhance water quality in the area. OCWC, which is proposed to be the owner and operator of the water system, is a member nonprofit corporation in good standing. It was created in 2004 under the provisions of Chapter 355 RSMo, and organized originally as a nonprofit sewer utility within the parameters of section 393.825, RSMo through section 393.861, RSMo. As such, OCWC is not subject to regulation by the Commission. Among several other sewer 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).

Under the provisions of section 393.829(15), RSMo, nonprofit sewer utilities may also provide services and assume responsibilities of nonprofit water utilities. In addition to the sewer systems it owns and operates, OCWC presently owns and operates water systems, including one that it acquired from a regulated water utility, Kimberling City Water Co. (WO-2015-0113).

### **STAFF’S INVESTIGATION**

Staff reviewed the corporate documents of UWRBF and OCWC in the above-mentioned cases. Staff is thus familiar with OCWC through the above-mentioned previous cases, and believes that OCWC is legitimately created and operating as a nonprofit sewer utility and nonprofit water utility under state statutes. Additionally, one of the principal owners of Foxfire is one of the organizers and officers of OCWC. This person has been involved for a number of years with other regulated water and sewer utilities besides Foxfire, either as an owner or as a contract operator through another company. From a day-to-day operations and customer service standpoint, there will be very little change with respect to the Spring Branch water system since the present contract operator will remain involved.

As this water system does not meet modern design standards and did not when Foxfire acquired it, there are a number of capital improvements that would be desirable. Foxfire had undertaken a study of possible system improvements in 2001, shortly after it acquired the system. The identified needs included a state approved well to replace the three existing old wells, a new water storage facility to provide adequate storage needs, and replacement of sections of the distribution system to improve

hydraulic flow and minimize pressure losses due to flow capacity. However, constructing the improvements was deemed to be cost prohibitive. The report suggested that Foxfire could work with DNR to obtain authority to operate the system as it existed, study water quality samples to determine what improvements if any would be absolutely necessary, and “grandfather” this system in as a permitted public drinking water supply, all of which Foxfire did. Since Foxfire’s acquisition, the system has been operated largely in compliance with DNR’s drinking water regulations, found at 10 CSR Division 60. Staff has communicated with DNR, which indicated to Staff that there are presently no compliance issues related to the Spring Branch system. Through the above-mentioned past cases, and through other regular contact with DNR staff, Staff believes that there are no major or unusual problems with OCWC’s operations, and thus Staff believes that OCWC will be capable of assuming and continuing operation of this water system within the requirements of DNR’s drinking water regulations.

### **Rate Impact**

OCWC states to Staff that it intends to initially adopt existing Foxfire Spring Branch rates. The current rates approved by the Commission for Foxfire’s Spring Branch service area, in effect since December 2002, are:

\$25.29 per month flat rate for full time residential customers

\$19.90 per month flat rate for part time residential customers

OCWC states that it has no plans at present to change rates applying to the Spring Branch water 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. Further, OCWC will need to communicate with its customers, and undertake funding and rate changes through approval of its board of directors, in the same manner as it already does for its existing customers.

### **Customer Notice**

With the input of Staff, Foxfire prepared a notice of this proposed transfer to send to its Spring Branch customers. A copy of the notice and a statement saying notices were mailed to each of the affected customers on November 5, 2015 is included in the case file, EFIS item No. 3. 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.

### **Tariff Issues**

Since Foxfire will remain a regulated water and sewer utility, Staff recommends that after the proposed transfer of assets is approved and accomplished, Foxfire modify its existing water tariff by removing text and rates specifically applicable to Spring Branch or Benton County. Staff recommends that Foxfire should file tariff sheets to do all of the following:

- 1) Revise the Index, 1<sup>st</sup> Revised Sheet No. W2, with a 2<sup>nd</sup> Revised sheet, to remove references to the Benton County service area;
- 2) Remove the service area description on Original Sheet No. WL3, by filing a 1<sup>st</sup> Revised sheet, with a notation “This page intentionally left blank” or something similar;

- 3) Remove the service area map on Original Sheet No. WM2, by filing a 1<sup>st</sup> Revised sheet, with a notation “This page intentionally left blank” or something similar;
- 4) Remove the rates on 1<sup>st</sup> Revised Sheet No. WR2, by filing a 2<sup>nd</sup> Revised sheet, with a notation “This page intentionally left blank” or something similar;
- 5) Remove the rates (service charges) on Original Sheet No. WR 2.1, by filing a 1<sup>st</sup> Revised sheet, with a notation “This page intentionally left blank” or something similar;
- 6) Remove reference to Benton County on Original Sheet No. WRR A which presently specifies both Stone and Benton Counties, by filing a 1<sup>st</sup> Revised sheet, either stating Stone County only, or a notation “This page intentionally left blank” or something similar;
- 7) Remove the header reference to Benton County on 1<sup>st</sup> Revised Sheet No. WRR28 by filing a 2<sup>nd</sup> Revised sheet retaining the existing text on the page; and,
- 8) Remove the header reference to Benton County on 1<sup>st</sup> Revised Sheet No. WSC1 by filing a 2<sup>nd</sup> Revised sheet retaining the existing text and service charges on the page.

### **OTHER ISSUES**

Foxfire has no delinquencies with regard to filing its annual reports through calendar year 2014, as documented on the Commission’s Electronic Filing and Information System (EFIS). Foxfire has paid annual assessments through all of fiscal year 2016, as posted by the Commission’s Administration Division on its assessment ledgers. Foxfire is held in good standing with the Missouri Secretary of State. Foxfire has no other pending actions before the Commission. UWRBF and OCWC have no other issues related to any cases before the Commission. Both are also held in good standing with the Secretary of State.

### **STAFF’S FINDINGS & CONCLUSIONS**

The Staff, based on its review as described herein, believes that the proposed sale and transfer of assets from the Company to the City is not detrimental to the public interest, and therefore recommends approval. Staff also recommends that following the completed transfers to UWRBF and then to OCWC, that the Commission cancel the CCN applying to Foxfire’s Spring Branch (Benton County) service area, and authorize Foxfire to modify its existing water tariff as described above.

### **STAFF’S RECOMMENDATIONS**

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

1. Approve the donation and transfer of water utility assets, as requested;
2. Require Foxfire to notify the Commission of closing on the transfer of water and sewer assets to UWRBF and 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 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;
6. Order Foxfire to, within twenty (20) days of closing, submit revised tariff sheets to remove text, rates, and references to the Spring Branch or Benton County service area, as described within this memorandum;
7. After the above notice of transfer of assets to UWRBF and to OCWC is received from Foxfire, cancel the CCN applying to Foxfire's Spring Branch service area; and,
8. Make no ratemaking determination regarding any potential future regulatory oversight, if any.

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Therewith, Certain Other Related )  
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Case No. WM-2016-0094

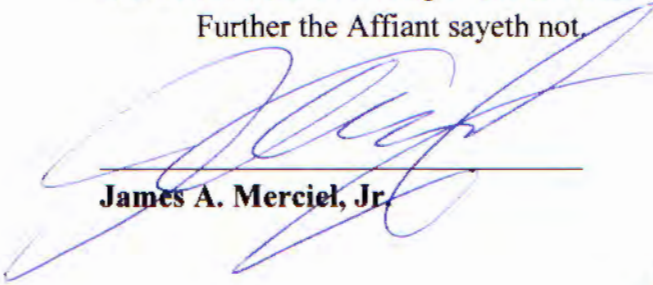
**AFFIDAVIT OF JAMES A. MERCIEL, JR.**

State of Missouri )  
County of Cole ) ss.  
County of Cole )

**AFFIDAVIT**

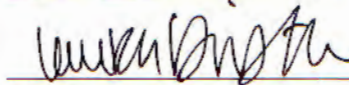
**COMES NOW** James A. Merciel, Jr. and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached Staff Recommendation and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

  
James A. Merciel, Jr.

**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 24th day of November, 2015.

  
NOTARY PUBLIC

