

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 27<sup>th</sup> day of  
June, 2018.

In the Matter of Application of The Public Funding     )  
Corporation of the City of Ozark, Missouri to Sell its     )  
Water System Located in Christian County to the     )  
City of Ozark, Missouri     )

**File No. WM-2017-0342**

**ORDER GRANTING MOTION FOR DETERMINATION ON THE  
PLEADINGS AND APPROVING TRANSFER OF ASSETS**

Issue Date: June 27, 2018

Effective Date: July 27, 2018

On June 19, 2017, the Public Funding Corporation of the City of Ozark (“PFC”) filed an application with the Missouri Public Service Commission (“Commission”), which was subsequently amended, seeking authority for a transfer of its assets from the PFC to the City of Ozark, Missouri (“City”) and the cancellation of the certificate of convenience and necessity authorizing PFC to provide water service to the public.

PFC is an existing regulated water utility currently providing water service to approximately 227 customers in a subdivision known as Finley Valley Estates, which is located outside of the City. PFC exists as a financing arm of the City and was the owner of a water system that was leased to the City to operate and provide water service to the Finley Valley customers. While the Finley Valley water system is not currently connected to the City water system, the City performs all the billing and collection of charges. PFC does not have any employees or water system assets within the Finley Valley subdivision, and it does not provide any oversight of the Finley Valley system. Finley Valley records stopped

being separate from the City in approximately 2011, and the City does not maintain separate records of the expenses of the Finley Valley system.

On June 27, 2017, the Commission issued notice and set an intervention deadline. No applications to intervene were filed. The City held a public meeting with the Finley Valley customers on September 14, 2017, and the Commission conducted a local public hearing on December 19, 2017. The Office of the Public Counsel (“OPC”) filed a Motion to Dismiss City of Ozark’s First Amended Application, which the Commission denied.

Staff filed a recommendation on September 27, 2017, recommending that the Commission approve the application because no public detriment would result from the transfer of assets. Staff states that the City serves approximately 1,662 customers outside its city limits, which also includes the Finley Valley customers. If the Commission approves the transfer nothing would change operationally within the system, as the City is already operating, maintaining, and providing billing services for the Finley Valley system and would continue to do so after the transfer. The Finley Valley system rates have not changed since 1995. The Finley Valley customers pay significantly lower rates than other City customers, either residing within or outside the city limits. Upon approval of the transfer, the City proposes to adjust the Finley Valley customers’ rates to the higher rates paid by customers residing outside the city limits.

OPC has not requested an evidentiary hearing or denied assertions in the application and Staff recommendation that the transfer would not be detrimental to the public interest. However, OPC claims that there is an unresolved legal issue concerning the impact of Section 386.250(3), RSMo 2016,<sup>1</sup> on the Commissions’ jurisdiction over Finley

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<sup>1</sup> Section 386.250(3) states that “[t]he jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter... To all water corporations,

Valley residents. OPC requests that the Commission establish a briefing schedule and hear arguments on this issue, because interpretation of this statute regarding Commission jurisdiction when water service is supplied to customers outside municipal corporate limits is unclear and remains an open issue that has not been resolved by current case law.

Contrary to OPC's assertions that this issue is unresolved, case law clearly demonstrates that the Commission does not have the power to regulate municipal water rates for customers that reside outside of city limits. In *Forest City v. City of Oregon*, 569 S.W.2d 330, 332-333 (Mo. App. 1978), the court considered the legislative and judicial history of Section 386.250 and agreed with two Attorney General opinions that concluded the statute "is not effective alone to confer any power upon the Commission to regulate municipal utility rates, even with respect to water sold beyond the corporate limits". Since this case law shows that the legal issue has been resolved, the Commission will deny OPC's request for additional briefing and argument.

No party requested an evidentiary hearing in this matter and no law requires one, so the Commission may grant the Applicant's request based upon the application and Staff's recommendation.<sup>2</sup> This action is not a contested case,<sup>3</sup> and the Commission need not separately state its findings of fact. Since this case does not seek a rate increase and is not subject to an operation of law date, the Commission may dispose of all or any part of

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and to the land, property, dams, water supplies, or power stations thereof and the operation of same within this state, except 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..." (emphasis added)

<sup>2</sup> See, *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

<sup>3</sup> Section 536.010(4), RSMo 2016.

this case on the pleadings whenever such disposition is not otherwise contrary to law or the public interest.<sup>4</sup>

PFC is a water corporation under Missouri law<sup>5</sup>, subject to the regulation, supervision and control of the Commission with regard to providing water service to the public. The Commission has jurisdiction to rule on the application because Missouri law requires that “[n]o ... water corporation shall hereafter sell ...its ... works or system ... without having first secured from the commission an order authorizing it so to do.”<sup>6</sup> The Commission will only deny the application if approval would be detrimental to the public interest.<sup>7</sup>

The City, PFC, and Staff agree that the public interest will suffer no detriment from the transfer of assets from PFC to the City. The City has continuously operated, maintained, and improved the Finley Valley water system since 1995, so the transfer of assets to the City will result in no change in the operation of the system. Finley Valley customers, as with all non-resident customers of the City, will be able to address service issues by contacting the City billing department. Finley Valley customers will also be able to bring service issues to the attention of the City by contacting the City’s Board of Aldermen or the City Attorney’s office or appearing at public meetings of the Board of Aldermen. The transaction will not have any impact on the tax revenues of any political subdivision where the water facilities are located.

Based on the information provided in the verified amended application and upon the verified recommendation of Staff, the Commission finds that the proposed transfer of

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<sup>4</sup> Commission Rule 4 CSR 240-2.117(2).

<sup>5</sup> Section 386.020(59), RSMo 2016.

<sup>6</sup> Section 393.190.1, RSMo 2016.

<sup>7</sup> *State ex rel. City of St. Louis v. Public Service Comm’n of Missouri*, 73 S.W.2d 393, 400 (Mo. 1934).

assets is not detrimental to the public interest and should be approved. The Commission also concludes that this order is not contrary to law or the public interest, so the Commission will grant Staff's motion for a determination on the pleadings.

**THE COMMISSION ORDERS THAT:**

1. The motion for a determination on the pleadings filed by Commission Staff on May 29, 2018, is granted.
2. The Office of the Public Counsel's request for additional legal briefing and argument is denied.
3. The Public Funding Corporation of the City of Ozark's application for approval of the transfer of the assets to the City of Ozark, Missouri is granted.
4. The Public Funding Corporation of the City of Ozark is authorized to sell and transfer to the City of Ozark, Missouri the water assets described in the application.
5. The Public Funding Corporation of the City of Ozark is authorized to do and perform, or cause to be done and performed, such other acts and things, as well as make, execute and deliver any and all documents as may be necessary, advisable and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.
6. The Public Funding Corporation of the City of Ozark shall, upon the closing of the transfer of water assets transaction, file a notice of closing in this case so that the Commission may subsequently cancel the existing certificate of convenience and necessity.

7. This order shall become effective on July 27, 2018.



**BY THE COMMISSION**

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Chm., Kenney, Rupp, Coleman, and  
Silvey, CC., concur.

Bushmann, Senior Regulatory Law Judge

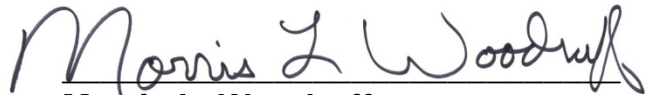
**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 27<sup>th</sup> day of June 2018.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**June 27, 2018**

**File/Case No. WM-2017-0342**

**Missouri Public Service  
Commission**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.