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 Ozarks Clean Water Company, and in Connection Therewith, Certain Other Related Transactions	))))))))	Case No. WM-2022-0186

APPLICATION FOR REHEARING

COMES NOW the Missouri Office of the Public Counsel ("Public Counsel") and respectfully requests rehearing[1] of the Public Service Commission's January 25, 2023 Amended Report and Order ("Order"); and states as follows:

1. Public Counsel's primary concern with this transfer of assets is the sale price, which the Commission acknowledges is thirteen times rate base, is detrimental because it will obligate Foxfire Utility Company's customers to pay their former utility owner $1.2 million that they would *not be obligated to pay* absent the transfer. The Order essentially concludes that rate base is irrelevant to determining whether the transfer would be detrimental to the public because the acquiring entity is a nonprofit utility. This finding and conclusion is unjust and unreasonable because rate base and the acquisition premium are very relevant to this proceeding. Public Counsel respectfully request that the Commission carefully consider the following more detailed explanation of this relevance.

[1] § 386.500 RSMo

2. The well-established formula for determining the revenue requirement for a public utility is RR = O + (V-D)R, where:

- O = operating costs (including maintenance, depreciation and taxes),
- V = gross valuation of property used to provide service,
- D = accumulated depreciation representing the capital recovery of gross property investment,
- V-D = rate base,
- R = overall rate of return or weighted cost of capital, and
- (V-D)R = return allowed on net property investment.[2]

3. By applying estimates specific to Foxfire into the formula, it is clear that Foxfire is grossly overearning. Foxfire's operating costs, the "O" in the Commission's formula, are approximately \$112,000. That figure includes Mr. Casaletto's estimates of \$60,000 operating and maintenance costs, \$20,000 electricity, and \$15,000 administration[3]; and Staff's identification of approximately \$17,000 in annual depreciation.[4] The Staff's rate base estimate is approximately \$90,000.[5] Lastly, the Order states that the weighted cost of capital ordered by the Commission in Foxfire's rate case 28 years ago, is 11.63%.[6]

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[2] In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service, Report and Order, Case No. ER-2016-0285, 2017 Mo. PSC LEXIS 213 (Mo. P.S.C. May 3, 2017), p. 8.

[3] Exhibit 300.

[4] Exhibit 200. The Staff states, "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 32, 2022 [sic]. This would reduce rate base by \$7,948 for water and \$8,900 for sewer, for a revised combined rate base of \$89,852." Annual deprecation is, therefore, \$7,948 + 8,900 = \$16,848.

[5] *Id.*

[6] Order, p. 10.

4. Applying the above numbers into the revenue requirement formula, the result is RR = $112,000 + ($90,000)11.63%, or RR = $122,467.

5. Mr. Casaletto estimates Foxfire's income at current rates is $200,000, which is $77,533 more than Foxfire's approximate revenue requirement.

6. As a regulated entity, the facts demonstrated in this case suggest a rate review is warranted to significantly *lower* rates consistent with the Commission's revenue requirement formula.

7. The Commission chose not to recognize the current revenue requirement and reduce rates, or limit the sale price to an amount the Commission would authorize for a regulated entity to protect the public. Instead, the Commission has authorized a transfer that will instead add another $1.2 million into the rate equation. This will require customers to pay Mr. Helms *at least* an *additional* $80,000 annually for the next 20 years.

8. The Order states, "[t]he buyer's annual debt obligation to the seller/financer is $6,600 per month, which is <u>only</u> 40% of Foxfire's revenues at its current rates."[7] Public Counsel requests that the Commission carefully consider the significance of this statement. The facts demonstrate that the Commission, following its long-held formula for determining just and reasonable rates, would reduce rates by approximately $80,000. However, the Commission is instead telling Foxfire's 258 customers that they now must continue paying Mr. Helms the amount of overearning for an additional 20 years. That amount is equal to a

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[7] *Id.* [emphasis added].

whopping 40% of their monthly water/sewer bill, with no corresponding plant additions or other benefits other than billing conveniences.

9. The Commission correctly points out that “OCWC does not set its rates with a return on equity.” While this recognition would “save” customers the 11.63%, or $10,467 they might otherwise pay, it would also impose an additional $80,000 worth of *de facto* annual return for the system’s current owner. The detriment to customers from this outcome is clear. An $80,000 annual burden is approximately an <u>88% return</u> on the remaining plant investment ($90,000 rate base/$80,000 new “debt” obligation). In other words, even though Mr. Helms has already profited handsomely from all of his plant investments, at a rate the Commission deemed just and reasonable (11.63%), the Commission has now determined in its Order that he should continue earning the current amount of overearnings for the next 20 years with no corresponding investments.

10. To make matters worse, customers may not be “out of the woods” with just a 20-year fixed amount of overearnings. The Ozarks Clean Water Company Board of Directors has clearly demonstrated their intent to impose an additional unspecified rate increase on Foxfire’s customers without any corresponding investments.

11. The relevance of rate base to this proposed transfer is that it establishes limitations on what a regulated entity can charge customers for rates. The Order allows a transfer of assets that ignores these limitations and imposes a long-term debt obligation on public ratepayers that would not occur absent the transfer. This is clearly detrimental to the public

12. The Order defines rate base as "the capital investment devoted to, and necessary for, providing reasonable, adequate service to customers." The Commission states further that "[a] utility company is entitled to a rate of return only on investments included in its rate base."[8] Here the Commission recognizes that rate base is without question a relevant factor to Foxfire's customers. It establishes a basis for setting just and reasonable rates that protect the public from paying rates that allow for overearning. Allowing the transfer at the proposed price harms the public because it would impose a burden on the public that would otherwise not occur and because it would impose a set rate that is not based on capital investment or a return that comes anywhere close to returns the Commission deems reasonable for the public.

13. Public Counsel requests rehearing because the Order unlawfully and unreasonably allows a transfer of assets that imposes a clear detriment to the Missouri public. §393.190 RSMo; *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466 (Mo. App. E.D. 1980).

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission rehear this matter to address the fact that the acquisition premium imposes a detriment not offset by any purported benefits.

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[8] Order, p. 14.

Respectfully submitted,

/s/ Marc Poston

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 3rd day of February 2023.

/s/ Marc Poston