

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

In the Matter of the Application of the Public)
Funding Corporation of the City of Ozark,) **File No. WM-2017-0342**
Missouri to Sell its Water System Located in)
Christian County to the City of Ozark)

**AMENDED RESPONSE TO
STATUS REPORT AND MOTION**

COMES NOW the Office of the Public Counsel and in response to the Staff’s filing of its *Status Report and Motion for Determination on the Pleadings* (“Status Report and Motion”) and the *City of Ozark’s Response to OPC’s Response to Staff’s Motion for Determination on the Pleadings* respectfully states:

1. The legal issue of the Commission’s statutory jurisdiction over Finlay Valley under Section 386.250(3) has not been addressed by the pleadings and it is unclear from current case law the exact extent of the Commission’s jurisdiction over “service or rates for water to be furnished or used beyond the corporate limits of such municipality.” It is unclear if the Commission’s jurisdiction would end if the Commission grants Staff’s Motion or the City’s recommendation to grant the Application for transfer.

2. On June 19, 2017, Ozark, filed its Application with the Commission asking approval for the City of Ozark to transfer assets of a regulated water corporation, the Public Funding Corporation of the City of Ozark, to the City of Ozark.

3. The PFC is currently a Commission regulated water corporation, which holds a Certificate of Convenience and Necessity (CCN) to provide water service to customers residing outside the boundaries of the City of Ozark. The water system is known as Finley Valley Water Company.

4. In the Application, both the PFC and the City requested the Commission approve transfer of the assets of the Finley Valley Water Company to the City and the City requests the Commission cancel the Finley Water Valley CCN.

5. In its Status Report and Motion Staff has recommended approval of the *Application* as not detrimental to the public interest.

5. Public Counsel requested and was granted public hearings at which state representatives and a significant number of customers appeared and complained about the total lack of any representation if the City were to take over the water utility.

6. Contrary to Staff's claims of delay and lack of objection to the sale as "detrimental to the public interest, Staff counsel is fully aware of Public Counsel's concern with the sale as denying the Finley Valley customers representation.

7. The attorney for the City of Ozark has expressed frustration with Public Counsels' communications with the City throughout the process. After conversation with the City's counsel today, Public Counsel has amended this pleading and notes that the City states discussion of the need for a hearing with Staff Counsel and Public Counsel was very preliminary and rejects the need for a hearing. City Response, para.4 and phone discussion.

8. Staff states that "there is no factual basis before the Commission to deny the asset transfer, and the remaining question is that of law."

9. Staff dodges, however, the truly troublesome legal question of application of the plain language of Section 386.250(3) RSMo (2016). The commission jurisdiction extends to "all water corporations, 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 supplied)

10. Additionally Staff's argument that "[i]f prudent investment is made into the system, rates correspondingly increase – regardless of Commission jurisdiction. If the City makes upgrades, rates will increase to cover those expenses" is incorrect and absolutely contrary to the facts in the case. At the public hearings, it was made clear that the City intends to increase rates with no actual basis or justification to support the proposed rate increase.

11. Public Counsel withdraws its recommendation the Commission allow time for the parties to continue discussions regarding the need for a hearing.

12. As noted above the issue remaining is a legal matter regarding the Commission's jurisdiction under Section 386.250(3). Public Counsel recommends the Commission set a briefing schedule to receive argument on whether the Commission retains jurisdiction over Finlay Valley even if it grants Staff's Motion for summary judgment.

WHEREFORE since Public Counsel and Staff agree the only remaining issue is a legal issue. Public Counsel states the interpretation of this statute regarding Commission jurisdiction when water service is supplied to customers outside a municipal corporate limits is unclear and remains an open issue, which has not been clearly resolved by current case law. Public Counsel requests the Commission establish a briefing schedule to hear arguments on this issue.

Respectfully submitted,

/s/ Lera L. Shemwell

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 12th day of June 2018.

/s/ Lera L. Shemwell