**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 )

**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”) respectfully states:

1. 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.

2. 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.

3. 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 cancel the PFC’s CCN.

4. In its Status Report and MotionStaff has recommended approval of the *Application* as not detrimental to the public interest.

5. In support of its Status Report and Motion, Staff is claiming Public Counsel has been derelict in its duties to represent the public. While it is true there have been delays, this charge is false.

6. 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.

7. 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 Finlay Valley customers any representation.

8. Additionally and again contrary to Staff’s assertions, the Ozark City attorney, Staff counsel, Marcella Forck, and Public Counsel Curtis Schube were discussing the possibility of requesting an on-the-record hearing. With the departure of Ms. Forck and Mr. Curtis Schube, Public Counsel is not aware of the progress made in those discussions.

Public Counsel has a message in to the Ozark City attorney to discuss the status of the discussions. Consequently Public Counsel asks the Commission grant it additional time to speak with the City and make a recommendation to the Commission.

9. It is the Applicant, not Public Counsel who has the burden to demonstrate the transfer is not detrimental to the public interest. The Applicant is unable to make this showing because the Finlay Valley customers will have no representation when the City raises its rates.

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

11. 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)

11. 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. That would not occur under Commission jurisdiction.

12. Public Counsel recommends the Commission allow time for the parties, including Staff Counsel, to continue discussions regarding the need for a hearing.

WHEREFORE since Public Counsel, Staff Counsel and the Ozark City attorney were in discussions concerning the need to schedule an on-the-record hearing, Public Counsel requests the opportunity to continue those discussions and make a recommendation to the Commission.

Respectfully submitted,

**/s/ Lera L, Shemwell**

Lera L. Shemwell, MBE #43792

Senior Counsel

PO Box 2230

Jefferson City, MO 65102

(573) 751-5565

[lera.shemwell@ded.mo.gov](mailto:lera.shemwell@ded.mo.gov)

Attorney for Office of the Public Counsel

**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 11th day of June 2018.

**/s/ Lera L. Shemwell**