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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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Procedural Conference

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October 19, 2017

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Jefferson City, Missouri

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

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DANIEL JORDAN, Presiding
REGULATORY LAW JUDGE

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REPORTED BY:

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Ashley M. Rouse, CCR No. 1403
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P R O C E E D I N G S

JUDGE JORDAN: The commission is calling the action in File No. WM-2017-0342. And this is in the matter of the 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.

I'm Daniel Jordan. I'm the regulatory law judge assigned to this action. Let's take entries of appearances, and if someone has a client representative present for this conference, please introduce them. We'll start with the applicant, Public Funding Corporation of the City of Ozark, Missouri.

MR. COLLIGNON: This is Dave Collignon. I'm the City Attorney for the City of Ozark, representing both the Funding -- Public Funding Corporation and the City of Ozark.

JUDGE JORDAN: Thank you. And for the staff of the public service commission.

MR. WESTEN: Good morning. My name is Jacob Westen. I am staff attorney with the Public Service Commission staff. My contact information has already been provided to the court reporter. With me this morning is also staff attorney, Marcie Forck. And also with us today is Mr. James Merciel, who is a member of

1 the Water and Sewer Department staff.

2 JUDGE JORDAN: Yes. The court reporter has
3 asked me to provide spellings and I neglected to do
4 that. Mr. Collignon, will you spell your name for the
5 court reporter, please?

6 MR. COLLIGNON: The last name is spelled
7 C, as in Charles, o-l-l-i-g-n-o-n.

8 JUDGE JORDAN: And everyone else, just go
9 around.

10 MR. WESTEN: Sure. Westen is spelled,
11 W-e-s-t-e-n. Forck is F-o-r-c-k. And Merciel is
12 M-e-r-c-i-e-l?

13 MR. MERCIEL: Right.

14 JUDGE JORDAN: And that's everyone so far.
15 And the Office of the Public Counsel.

16 MS. SHEMWELL: Good morning. Lera Shemwell
17 representing the Missouri Office of the Public Counsel
18 and the public. I've given my information to the court
19 reporter so she has the spelling of my name.

20 JUDGE JORDAN: Okay. We're here for a
21 pre-hearing conference on this application. We're
22 going to have some discussions on the record. We can
23 discuss procedures, some substantive issues, even
24 possibilities for settlement if the parties wish. And
25 I have some issues that I need to clarify. After

1 that's done, we will go off the record so that the
2 parties can discuss these issues outside of my
3 presence, including, sensitive information that might
4 be useful in settlement, but that the parties don't
5 want me to hear. We have this room and this line
6 until 9:30. At 9:30, the Commission will take up its
7 public meeting of the posted agenda.

8 I will also ask -- I will also mention that
9 mediation differences is also possible on the -- almost
10 all the regulatory law judges are trained in civil
11 mediation. My hope is that the parties will come up
12 with a proposed procedural schedule for the procedural
13 advices they deem useful. When we're done, I'm going
14 to ask staff if they would hang up the line.

15 Any questions on what we're doing so far
16 today?

17 MR. COLLIGNON: No, sir, I'm good.

18 JUDGE JORDAN: Okay. Staff?

19 MR. WESTEN: None from staff.

20 JUDGE JORDAN: Ms. Shemwell?

21 MS. SHEMWELL: No questions. Thank you.

22 JUDGE JORDAN: Okay. Well, I've got a couple
23 questions for the parties, let's start with OPC. Does
24 the Office of Public Counsel have a position on this
25 application? I didn't see a response to the

1 recommendation.

2 MS. SHEMWELL: Public Counsel is still
3 researching its position -- legal position.

4 JUDGE JORDAN: Okay.

5 MS. SHEMWELL: And our hope would be that we
6 can discuss with the parties and reach a settlement.
7 That's where we are. But we have asked for a public
8 hearing because we have received many public calls;
9 calls from the public expressing concerns with the
10 amount of the rate increase.

11 JUDGE JORDAN: Well, let's see if we can set
12 a date certain for filing something -- some kind of a,
13 maybe that would take the form of a response to the
14 application --

15 MS. SHEMWELL: Okay.

16 JUDGE JORDAN: -- or response to the
17 recommendation, something like that. I'd like to see
18 that on a proposed procedural schedule.

19 MS. SHEMWELL: Okay. I can do that.

20 JUDGE JORDAN: As Counsel mentions, there's a
21 request for local public hearing, if the parties can
22 come up with a range of dates, that would be helpful,
23 mindful of Commission's crowded schedule this autumn.

24 Here's my question for staff, if I read -- if
25 I recall staff's recommendations, staff doesn't think

1 that the Commission should be regulating this water
2 system at all; is that correct?

3 MR. WESTEN: That's -- that's correct, Judge.
4 The nature of what the Public Funding Corporation is as
5 an entity actually owned and operated by the City of
6 Ozark, that would put it within the control of the
7 municipality. Our statutes do not authorize the
8 regulation of municipal systems. There's been several
9 Missouri Supreme Court cases that address that issue
10 very specifically.

11 And I would direct the Commission's attention
12 to a couple cases in particular. One is Forest
13 City v. City of Oregon, where the statute that remains
14 within our structure, which it suggests that we
15 might -- the Commission might be able to regulate
16 outside of municipal limits. That case very explicitly
17 says that statute is not enough on its own to regulate
18 a municipally owned system.

19 We know the system is being run by the
20 employees of the city. It doesn't -- PFC Ozark doesn't
21 have its own employees. It's -- it is essentially an
22 arm of the City. And just looking at the case law, I
23 think it's pretty clear that this is not an entity
24 within the Commission jurisdiction.

25 JUDGE JORDAN: Okay. Does the City of Ozark

1 and the City of Ozark's Public Funding Corporation, do
2 you want to throw in on that theory, is that where you
3 are? Do you have something to add to that perspective?

4 MR. COLLIGNON: We don't really have anything
5 to add to that. And yes, most certainly, Mr. Westen
6 characterized the relationship between the Public
7 Funding Corporation and the City of Ozark accurately.

8 JUDGE JORDAN: Okay. If I understand it,
9 the -- that little statutory provision to which
10 Mr. Westen referred to is a fragment of an earlier set
11 of statutes under which the Commission was directed to
12 regulate municipal water rates, but that was all
13 repealed.

14 MR. WESTEN: That's staff's understanding of
15 the history of the statute and the regulation, Your
16 Honor.

17 JUDGE JORDAN: Yeah, that's what I gather
18 from the case law.

19 MS. SHEMWELL: Except it does say outside of
20 the City boundaries is -- that's part -- that's a
21 statute.

22 JUDGE JORDAN: Right. Right. Right. Yeah,
23 that little stub still remains in the statute.

24 MS. SHEMWELL: It does remain just by --

25 JUDGE JORDAN: Here's my issue though; I

1 mean, even if -- assuming that the applicant, the City
2 and staff are correct, does that -- does the existence
3 of a corporation mean nothing here? I mean, certainly
4 the City formed a corporation for a reason and there --
5 there are benefits. Also, are there not burdens and I
6 ignore the corporate forming?

7 MR. WESTEN: Well, I think, Your Honor -- I
8 agree that I don't believe you can ignore the corporate
9 form. And I'm not prepared, nor do I have research to
10 try to discuss piercing of a corporate veil from a
11 separate legal entity to the City itself, and I don't
12 want to speak for Mr. Collignon or his thoughts on that
13 issue.

14 JUDGE JORDAN: Okay.

15 MR. WESTEN: I do think, however, that while
16 it would be staff's position that we don't regulate
17 them, there's no reason that this process that we are
18 currently in would not ultimately resolve any
19 jurisdictional questions as, if the Commission having
20 already previously stated in 1995 that it believes it
21 has jurisdiction, completes this transaction, approves
22 the sale as if it were still in control of the
23 transaction, and letting the situation wrap up with a
24 transfer, acknowledging it's no longer within our
25 control, and approving the sale. I think that might

1 side step some of these more thorny gray area
2 questions, and reach a result that I think Staff and
3 the City would be happy with, and potentially Public
4 Counsel, depending on their viewpoint.

5 JUDGE JORDAN: All right. So you're saying
6 in the alternative, if the Commission approves the
7 transaction, then the Commission certainly will not
8 have jurisdiction?

9 MR. WESTEN: Yes, Your Honor.

10 JUDGE JORDAN: There won't be -- will
11 there -- because that system will be owned and operated
12 by an entity over which at least Staff and the
13 Corporation and the City believe the Commission cannot
14 regulate?

15 MR. WESTEN: Yes, Your Honor.

16 JUDGE JORDAN: OPC is suggesting that
17 portions outside the City are still subject to the
18 Commission's regulations?

19 MS. SHEMWELL: Potentially, because they have
20 no representation.

21 JUDGE JORDAN: Right. I think that's -- I
22 noted that point as well. So noted.

23 MS. SHEMWELL: Let me -- may I?

24 JUDGE JORDAN: Please, please, go ahead.

25 MS. SHEMWELL: The case law so far -- what

1 I've read so far is that if it's two municipals, one
2 buying from the other, that's a totally different
3 situation than we have here, because they are each
4 represented by group politics. So the customers have
5 some representation. Here, the customers will have no
6 representation, and are questioning the amount to be
7 charged through the Commission while they can.

8 JUDGE JORDAN: Right. This is -- this is the
9 opposite of a scenario that came across my desk a
10 couple years ago, in which -- which involved a water
11 district -- a public water district, in which the
12 person -- the customers of the system that was being
13 bought would have votes in the water district. Staff
14 opposed that. I believe we did have jurisdiction even
15 though there was representation. Here, there will be
16 no representation and staff is okay with it, so that's
17 why I'm inquiring. It's essentially different.

18 MR. WESTEN: Well, I'm not -- Judge, I'm not
19 familiar with the case that you've referenced. I don't
20 know if Mr. Merciel might want to --

21 JUDGE JORDAN: Why don't I just give you a
22 reference on that.

23 MR. WESTEN: Sure.

24 JUDGE JORDAN: Here we go. Oh, here we go.
25 Try this file number, WM-2015-0231. And the order

1 granting application in that case came out on June 24th
2 of 2015. So there's that.

3 Mr. Collignon, anything that you would like
4 to add to this discussion of jurisdiction?

5 MR. COLLIGNON: Yeah --

6 JUDGE JORDAN: Hang on a second, we're having
7 a problem hearing you.

8 MR. COLLIGNON: I --

9 JUDGE JORDAN: I'm sorry. Mr. Collignon,
10 we're still having a hard time hearing you. I wonder
11 if you're muted at your end?

12 MR. COLLIGNON: -- from a lawyer. So I have
13 a couple of personal comments that also represent --

14 JUDGE JORDAN: Mr. Collignon, can you hear us
15 at all?

16 MR. WESTEN: Dave, we can't hear you at all.

17 MR. COLLIGNON: Okay.

18 MS. FORCK: Should we try calling back into
19 the line, perhaps?

20 MR. COLLIGNON: I'd be more than happy to
21 dial in on whichever number you want.

22 MS. SHEMWELL: I can hear him.

23 MS. FORCK: He's on the line, but it sounds
24 as though he's not -- you know, this is a speaker
25 phone, but it sounds like it's not.

1 MS. SHEMWELL: It's not.

2 MR. WESTEN: Yeah.

3 MR. COLLIGNON: Want me to call back in?

4 JUDGE JORDAN: Can you tell whether he can
5 hear us?

6 MR. WESTEN: I think he can. Can you hear
7 us?

8 MR. COLLIGNON: (No audible response.)

9 MR. WESTEN: I can't hear him.

10 MS. FORCK: Mr. Collignon, why don't you try
11 and hang up and call back in, and we'll hang up and
12 call back in as well.

13 (Phone line goes blank.)

14 JUDGE JORDAN: Okay. Staff Counsel is
15 dialing in again.

16 MR. COLLIGNON: Hello.

17 MR. WESTEN: There we go.

18 JUDGE JORDAN: Here we are. Well,
19 Mr. Collignon, I was asking whether you had anything to
20 throw in on the discussion of the Commission's
21 jurisdiction?

22 MR. COLLIGNON: Let me put it to you this
23 way, what I started to say is, is that I'm a very
24 practical kind of a lawyer. What I'm about to tell you
25 is not necessarily obviously a reasoned legal opinion,

1 I don't have anything to back this up. I'm telling you
2 that the City of Ozark is willing to do whatever the
3 Public Service Commission finds appropriate. I think,
4 obviously, that the situation requires the Public
5 Service Commission's jurisdiction to approve the
6 application. The question then ultimately becomes
7 rates. And that's the only issue here.

8 If the Public Service Commission determines
9 that they would prefer to take jurisdiction strictly
10 over the rate structure, fine, I don't care. We'll
11 submit the appropriate application to submit rates.
12 We'll do whatever the PSC wants us to do.

13 JUDGE JORDAN: Well, Mr. Collignon, I
14 appreciate that candid and pragmatic approach to
15 governmental affairs. So --

16 MR. COLLIGNON: Now, maybe that's the
17 discussion we were going to have about settlement off
18 the record, but I don't know that we need to waste a
19 hell of a lot of time on this.

20 JUDGE JORDAN: Well, a waste of time is never
21 a good idea when it comes to taxpayer money or rate
22 payer money, so I think that's a constructive direction
23 for this.

24 Okay. I think that's pretty much covered the
25 issues that I had for the parties. While I'm still

1 here in the room, what else can I do for the parties,
2 anything else before we go off the record?

3 MR. WESTEN: Judge, one question for you.

4 JUDGE JORDAN: Okay.

5 MR. WESTEN: Do you have a sense of the --
6 just a rough sense of a timeline for a procedural
7 schedule? Are you anticipating a -- I think a local
8 public hearing makes sense. Are you anticipating
9 something shortly, or in the mid-term, I -- as you
10 identified, this is a busy autumn for the Commission.

11 JUDGE JORDAN: Right.

12 MR. WESTEN: I just wanted to get an idea if
13 you had a sense of a rough timeline?

14 JUDGE JORDAN: The Commission has four
15 general rate actions pending.

16 MR. WESTEN: Yes.

17 JUDGE JORDAN: So the Commission, its judges,
18 its advisors, and its staff are pretty well occupied.
19 I don't get any sense of urgency for deciding this from
20 the Commission. If the parties have deadlines that
21 they wish to meet, that's an issue for the parties. I
22 just want them to be aware that there are these other
23 cases that the parties will have to look for on the
24 Commission's calendars to structure the flow of this
25 case around.

1 MR. WESTEN: Okay.

2 MS. SHEMWELL: Okay.

3 JUDGE JORDAN: That's my only point with
4 that.

5 What else can we do for the parties while I'm
6 still in the room and we're on the record?

7 MS. SHEMWELL: I don't think of anything.

8 JUDGE JORDAN: Is there anything from staff?

9 MS. FORCK: I don't think so.

10 JUDGE JORDAN: Anything from the Public
11 Funding Corporation or the City?

12 MR. COLLIGNON: No, sir. Thank you for your
13 time.

14 JUDGE JORDAN: Oh, you're quite welcome. And
15 happy to be of assistance. And I'll be in the building
16 all day if the parties need me to sort out anything
17 else for them.

18 Well, not hearing anything else, I think I
19 will call this part of the conference to an end. I
20 will adjourn this conference for now. And we will go
21 off the record.

22 (Conference concluded.)
23
24
25

C E R T I F I C A T E

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

I, Ashley M. Rouse, Certified Court Reporter for the firm of Tiger Court Reporting, do hereby certify that the above and foregoing is a true and accurate transcription, to the best of my ability, of the procedural conference of the Missouri Public Service Commission held In the Matter of the Application of the Public Funding Corporation of the City of Ozark, Missouri, to sell its water system located in Christian County, Missouri, to the City of Ozark, Case File No. WM-2017-0342, on October 19, 2017.

Ashley M. Rouse

Ashley M. Rouse
TIGER COURT REPORTING

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