

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

PUBLIC COUNSEL RESPONSE IN OPPOSITION TO TRANSFER

COMES NOW the Office of the Public Counsel (“Public Counsel”) pursuant to its authority to represent and protect the interests of the public under §386.710 RSMo, states as follows:

1. Foxfire Utility Company (“Foxfire”), a public utility regulated by the Public Service Commission, proposes to sell its water and sewer assets to Ozarks Clean Water Company (“OCWC”), an unregulated entity.

2. The Staff’s June 28, 2022 Recommendation identifies several “concerns about the transaction” that Public Counsel asserts warrant a denial of the Application. These concerns include the fact that the purchase price, \$1,285,400, includes a premium of \$1,195,548, “*which is thirteen times over the estimated rate base of \$89,852*”, and the existence of a “*close relationship between the owner of Foxfire and the current President of OCWC.*”¹

3. Despite the Staff’s concerns, the Staff recommends approval of the proposed transfer because “[t]he Commission does not regulate OCWC, nor

¹ Staff Recommendation, pp 3-4 of Staff’s cover pleading

does it have jurisdiction over OCWC's board of directors or the future rates set by that board." The Staff states further that its concerns "may be allayed since OCWC has no motive for seeking profits as it is a nonprofit entity and its directors are answerable to its members."² The Staff's Recommendation also states that if the Commission had not approved prior transfers opposed by Staff, it would not support the transfer in this case.³

4. While the Staff correctly points out that OCWC is not a regulated entity, that fact should not prevent the Commission from protecting the public from detrimental impacts of this proposed transfer. The Foxfire customers are still under the protection of the Commission, and deserve an outcome that avoids a detrimental transfer of their service as proposed. Having directors that are "answerable to its members" could result in the replacement of directors, but it would not result in the replacement of the obligation to repay the \$1,195,548 premium over the next twenty years.

5. The Commission's authority regarding the transfer of assets includes the authority to deny such transfers whenever the Commission determines the transfer would be detrimental to the public interest. §393.190 RSMo; *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466 (Mo. App. E.D. 1980). Public Counsel asserts that approval of the transfer at the proposed price would be detrimental to the public interest and urges the Commission to deny the requested transfer of assets.

² *Id.*, p. 4

³ *Id.*, Appendix A, Memorandum

WHEREFORE, the Office of the Public Counsel respectfully offers this response to the Staff's Recommendation and urges the Commission to deny the requested transfer of assets.

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 8th day of July 2022.

/s/ Marc Poston
