

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

In the Matter of application of the Public)	
Funding Corporation of the City of)	
Ozark, MO to Sell its Water System)	CASE NO. WM-2017-0342
Located in Christian County to the City)	
of Ozark, MO)	

**ENTRY OF APPEARANCE AND CITY OF OZARK’S SUGGESTIONS IN
OPPOSITION TO OFFICE OF PUBLIC COUNSEL’S MOTION TO DISMISS**

COMES NOW Amanda R. Callaway, and hereby gives her Notice of Appearance on behalf of the City of Ozark, Missouri, and for its Suggestions in Opposition to the Office of Public Counsel’s (OPC) Motion to Dismiss hereby state as follows:

The Public Service Commission (Commission) does not have jurisdiction over municipally owned public utilities nor does it have the power to regulate municipal utility rates, even with respect to water sold beyond the corporate limits of a municipality.

Forest City v. City of Oregon, 569 S.W.2d 330 (1978), City of Columbia v. State Public Service Commission, 329 Mo. 38, 43 S.W.2d 813 (1931), *See also* Staff Rec. pg. 2.

However, in the present case, the transfer of the water system from the Public Funding Corporation, a corporation as defined by Section 386.020 RSMo, to the City of Ozark, Missouri (City) properly falls under Section 393.190 RSMo which requires the authorization of the Commission.

OPC assert incorrectly that the Commission has no jurisdiction over the transfer of the water system from the Public Funding Corporation to the City because of the use of the terms “corporation, person or public utility” in Section 393.190 RSMo, as defined in Section 386.020 RSMo. The transfer in the present case falls within the first

prohibited type of transfer listed in Section 393.190 RSMo not the second type of transfer, where the terms “corporation, person or public utility” apply. Section 393.190 RSMo states in the first sentence,

“No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, *nor* by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.” (Emphasis added).

Webster’s dictionary defines the term “nor” as, “used as a function word to introduce the second or last member or the second and each following member of a series of items each of which is negated.” Therefore, the use of the word “nor” begins the second prohibited type of transfer without authorization of the Commission in Section 393.190 RSMo, which applies only to mergers and consolidations, the two transfers that fall after the use of that term. The transfer in the instant case is from a water corporation, the Public Funding Corporation, to a municipality, the City. Therefore, this transfer properly falls under the first prohibition in Section 393.190 RSMo as it is a sale, assignment, lease, transfer, mortgage, or other type of disposal of a water corporation and requires the authorization of the Commission.

The standard for the Commission’s approval of said transfer is whether the transaction is not detrimental to the public interest. *State ex re. City of St. Louis v. Public*

Service Commission of Missouri, 73 S.W.2d 393 ,400 (Mo. Banc 1934). *See also* Staff Rec. pg. 4. Staff filed in its Staff Recommendation that, “Staff’s position is that this sale on the whole is not detrimental to the public interest...accordingly, the sale should be approved, and the CNN should be canceled.” Staff Rec. pg. 5. The City agrees with this recommendation.

Additionally, OPC incorrectly asserts that Section 91.120 RSMO requires the City to first submit to its electorate and secure its approval prior to purchasing the water system. However, Section 91.120 RSMo requires an election only if the City proposes to issue bonds for the purchase of the water system. Section 91.120 RSMo provides ballot language that proposes to the voters the question of whether the “city shall acquire the waterworks system and property and issue bonds therefor, which shall be a first lien on the waterworks system and property, but not a general or personal obligation of the city.” In the present case, the City is not proposing to acquire the water system by the issuance of bonds. Further, the City is not required to purchase the water system with bonds because a city “may acquire a waterworks or water supply system by purchase by the use of unencumbered, and otherwise unappropriated, surplus funds on hand in its general fund.” *Mathieson v. Public Water Supply Dist. No. 2 of Jackson County*, 401 S.W.2d 424, 429 (Mo 1966). “The grant of power to acquire a water system carries with it, by necessary implications, the authority to use money on hand as the means of payment.” *Id.* at 429. By operation of the lease agreement, the City will acquire the water system upon approval of the Application by the Commission and Section 91.120 RSMo does not require that the electorate approve this type of transfer. It follows that the request for an Order authorizing the Public Funding Corporation to discontinue providing service and

the immediate continuance of service by the City is not premature as no election is required.

WHEREFORE, City prays that the Office of Public Counsel's Motion to Dismiss is denied and in the alternative respectfully requests the Commission grant the Public Funding Corporation the authority to transfer the water system to the City of Ozark, Missouri and cancel the Certificate of Convenience and Necessity authorizing it to provide water service to the public and for such other relief as may be appropriate.

Respectfully submitted,

City of Ozark, Missouri

By: /s/ Amanda R. Callaway
Amanda R. Callaway
City Attorney
Bar No. 62036
City of Ozark, Missouri
P.O. Box 295
Ozark, MO 65721
(417) 581-4651 PHONE
(417) 581-0695 FAX

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of January, 2018 the foregoing was filed electronically which provided notification of such filing to the parties of record in this matter.

By: /s/ Amanda R. Callaway
Amanda R. Callaway