

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

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

**CITY OF OZARK’S RESPONSE TO OPC RESPONSE TO STAFF’S MOTION  
FOR DETERMINATION ON THE PLEADINGS**

COMES NOW Amanda R. Callaway, on behalf of the City of Ozark, Missouri,  
and for its Response to the Office of Public Counsel’s Response to Staff’s Motion for  
Determination on the Pleadings hereby states as follows:

**Procedural History**

1. On June 19, 2017, the City of Ozark, Missouri (“City”) 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.
2. On June 26, 2017, the City filed its First Amended Application.
3. On June 27, 2017, the Commission issued an Order Directing Notice and Setting of Time for Filing.
4. On September 14, 2017, a local public hearing was held.
5. On October 2, 2017, OPC filed a Motion for an Order Directing a second Local Public Hearing and on December 19, 2017, a second local public hearing was held.
6. On January 9, 2018, OPC filed its Motion to Dismiss, which was denied on February 7, 2018.

7. On April 26, 2018, OPC filed notice of withdrawal of counsel by Mr. Schube. No other communication was made by OPC to City regarding this case until June 11, 2018 at 3:53 p.m. when OPC attorney, Ms. Shemwell contacted the City to discuss its Response to Status Report and Motion. The City promptly returned Ms. Shemwell's call at 5:00 p.m. and left a message. Ms. Shemwell called the City back that after 5:00 p.m. and left another message but City offices were closed.

### Argument

1. OPC incorrectly asserts that the City is unable to make a showing that a transfer is not detrimental to the public interest because the Finley Valley customers will have no representation with the City. The City is able to show that the Finley Valley customers will have representation with the governing body of the City, the Board of Aldermen. *Any interested person* has the opportunity to address the Board of Aldermen at Aldermanic meetings on any bill or other matter before the Board pursuant to Section 110.235 of the Municipal Code of Ozark, Missouri. (emphasis added). That Section additionally states that *any person* may direct a written communication to the Board of Aldermen on any matter concerning the City's business. (emphasis added). Further, that Section states that *any person* may personally address the Board on any matter not then before it by notifying the City Clerk four days prior to the meeting. (emphasis added). The use of the words "any interested person" and "any person" are not limited to citizens of Ozark, Missouri and therefore, include Finley Valley customers. Not only do Finley Valley customers have several direct means of representation outlined in the City Code but it is arguably more direct than any representation they presently have with the Public Funding Corporation who does not hold regular meetings.

2. While, OPC argues that the City has a burden to demonstrate that the transfer is not detrimental to the public interest, a point unsupported by OPC with any authority, OPC itself has not filed a motion objecting to the transfer. OPC has had nearly one year from the original filing of the Application to file a motion setting forth an objection articulating the manner in which it believes this transfer will be a detriment to the public and it has failed to do so.

3. The purpose of the approval of the Commission prior to transfer to the City is “to ensure the continuation of adequate service to the public served by the utility.” *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. Ct. App. 1980). Regarding continuation of adequate service, the City is presently providing the water service and system operations so daily function of the services will not change. “A property owner should be allowed to sell his property unless it would be detrimental to the public.” *State ex rel. City of St. Louis v. Pub. Serv. Comm'n of Missouri*, 335 Mo. 448, 459, 73 S.W.2d 393, 400 (1934). Regarding whether the transfer is detrimental to the public, the City Code, as explained in detail above, has a method for allowing Finley Valley customers to address the Board of Aldermen regarding the water services. Therefore, the City has met the burden by showing the water service will be continued and there will be no detriment to the public.

4. OPC summarizes an informal communication that occurred in February between the parties regarding the next steps in this case stating that they do not know the progress made in those discussions. OPC has had several months to determine the progress made, which was none. There were no formal conversations and no motions were filed regarding them. OPC references its recent efforts to contact the City on June

11, 2018 but fails to state that it was only two hours prior to the filing of their motion. Reference to these communications and the use of them as an argument to continue the case frustrates the City especially due to the fact that OPC has had several months to contact the parties, including the nine days between the Staff motion and OPC's deadline to file a response, yet OPC waited until two hours prior to the deadline.

5. OPC incorrectly asserts that a rate increase would not occur under Commission jurisdiction. There is a method to increase rates under Commission jurisdiction.

6. The City objects to allowing any more time for the parties to discuss a need for a hearing. There has been ample time for the parties to discuss this case and OPC has made no effort to communicate until the deadline.

WHEREFORE, City respectfully moves the Commission grant the Application on the pleadings, authorizing the Public Funding Corporation 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

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 12<sup>th</sup> day of June, 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