

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

In the matter of the Application of Ozark Shores Water)
Company, North Suburban Public Utility Company and)
Camden County Public Water Supply District Number Four)
for an order authorizing the Sale, Transfer and Assignment) Case No. **WM-2015-0231**
Water Assets to Camden County Public Water Supply)
District Number Four and in connection therewith certain)
other related transactions)

RESPONSE TO TESTIMONY

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Response to Testimony* in compliance with the Commission's *Order* of June 5, 2015, states as follows:

1. Staff appreciates Ozark Shores Water Company and the Board of Camden County Public Water Supply District No. 4 submitting its testimony in the proceeding. Staff has reviewed the testimony and states that it still has concerns regarding the result of the transaction. Staff is not opposed to the sale to the District. Staff is still concerned that the transaction as currently set forth is detrimental to the public interest in that the purchase price is inflated, is based upon a revenue stream that will no longer be available, and rates will likely need to be increased significantly to offset those two facts. Staff continues to urge the Commission to set this matter for a prehearing conference.

2. On March 25, 2015, Ozark Shores Water Company ("Ozark Shores"), North Suburban Public Utility Company ("Suburban") and Camden County Public Water Supply District No. 4 ("PWSD"), collectively the "Joint Applicants," filed their *Joint Application* seeking authority to transfer Ozark Shore's water system assets used in

the provision of regulated utility services to the public to PWSD for \$5,252,781. The transaction also includes the sale by Suburban to PWSD of certain tracts of land and buildings used by Ozark Shores for \$165,000, a transaction that does not require the authority of the Commission.¹

3. On May 5, 2015, Staff filed its *Recommendation to Deny Transfer of Assets and Request for Local Public Hearing*.

4. On May 7, 2015, the Joint Applicants responded to Staff's *Recommendation*. Attached to Joint Applicants' *Response* as Appendix 1 was a report prepared by Boone Partners, LLC ("*Boone Partners Report*"). The *Boone Partners Report* stated, at page 4, that PWSD would appear to require financing on the order of \$8,600,000 to acquire Ozark Shores at the agreed purchase price and retire its existing debt, requiring debt service amounting to some \$300,000 to \$400,000 annually.²

5. Attached to the *Boone Partners Report* as Exhibit 1 was a financial report entitled, "Ozark Shores Water Company Free Cash Flows" (hereafter the "*Free Cash Flows Report*"). For 2015, the *Free Cash Flows Report* projected total revenues of \$831,957, including availability fees revenue of \$199,670. Although total revenues for 2015 were projected to lag total expenses by \$68,357, the *Free Cash Flows Report* projected that \$347,845 would be available for debt service because of the avoidance of various expense items now paid by Ozark Shores, including Management Fees, PSC Assessment and Depreciation Expense. The availability fees represent 57% of the projected free cash flows.

¹ Suburban, which is not a Missouri regulated utility, owns all of the outstanding shares of Ozark Shores.

² *Boone Partners Report*, Exs. 4A and 4B.

6. As Staff pointed out in its *Suggestions in Support of its Motion for Evidentiary Hearing*, filed on May 29, 2015, the availability fees revenue will be subject to the Hancock Amendment³ if PWSD buys Ozark Shores. Staff directed the Commission to ***Zweig v. Metropolitan St. Louis Sewer District***,⁴ wherein the Missouri Supreme Court considered a “stormwater user fee” imposed by the Metropolitan St. Louis Sewer District (“MSD”) for the “‘continuous and ongoing’ **availability** of a stormwater drainage system regardless of the weather, and the ‘continuous and ongoing’ **availability** of its oversight functions regardless of when they are requested or needed.”⁵ The Court concluded that the stormwater user fee was a tax and not a user fee at all and that it could not be imposed except by popular vote.⁶ Like MSD, PWSD is a public governmental body, subject to the Hancock Amendment.

7. John Summers testified that, if the availability fees revenue is not available after the transaction, “the revenue would need to be replaced by revenue from other sources to cover the cost of operations.”⁷ Summers further testified that the PWSD has the authority to replace the availability fees revenue with increased rate revenue.⁸

8. Based on the foregoing, Staff advises the Commission that a rate increase will be likely if the proposed transaction goes forward.

9. As Staff pointed out in its *Suggestions* referred to earlier, Missouri courts have held that a rate increase may be detrimental to the public interest.⁹ Whether or not

³ Mo. Const., art. X, § 22(a).

⁴ 412 S.W.3d 223 (Mo. banc 2013).

⁵ *Id.*, at 235. Emphasis in the original.

⁶ *Id.*, at 244.

⁷ Summers Direct, p. 5, lines 4-5.

⁸ *Id.*, lines 7-8, 10-14, 21-22.

⁹ ***State ex rel. Praxair, Inc. v. Missouri Public Service Com'n***, 344 S.W.3d 178, 188 (Mo. banc 2011);

a rate increase would be detrimental in this case would be a matter for the Commission's determination upon consideration of the costs and the benefits of the proposed transaction. Staff notes that there is presently no evidence as to any benefits of the transaction before the Commission.

10. It continues to be Staff's position, as explained elsewhere, that this is a contested case and that a hearing is required.

WHEREFORE, Staff tenders its *Response to Testimony* in compliance with the Commission's *Order*.

Respectfully submitted,

/s/ Kevin A. Thompson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by First Class United States Mail, postage prepaid, to all counsel of record this 11th day of June, 2015.

/s/ Kevin A. Thompson

State ex rel. AG Processing, Inc. v. Public Service Com'n of State, 120 S.W.3d 732, 736 (Mo. banc 2003).