

Exhibit No.:

Issue:

Overview of Asset Transfer
Agreement and
Public Interest

Witness:

Rick Rusaw

Sponsoring Party:

Big Island Water & Sewer
Company, Inc.

Case No.:

Case No. WO-2007-0277
**Joined for hearing with
Case No. WC-2006-0082**

BIG ISLAND WATER & SEWER COMPANY, INC.

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DIRECT TESTIMONY

OF

RICK RUSAW

Longmont, Colorado

February, 2007

DIRECT TESTIMONY OF RICK RUSAW

Q. **What is your name and your business address?**

A. My name is Rick Rusaw. The address I consider my business address is the address of the church where I am senior pastor. That address is Lifebridge Christian Church, 10345 Ute Highway, Longmont, Colorado 80504.

Q. **Mr. Rusaw, do you hold a position with the applicants in this case?**

A. Yes, I am one of two Members of Folsom Ridge LLC. Mr. Reginald V. Golden is the other member in the LLC. I am also President of Big Island Homeowners Water and Sewer Association, Inc. (the Association), and a member of its board of directors.

Q. **Would you please provide your education and experience for the Commission.**

A. My resume can be found as Schedule BB 2B to Ms. Brunk's direct testimony and I would refer the Commission to that schedule.

Q. **What is the purpose of your direct testimony?**

A. I will describe for the Commission the major points of the Asset Purchase Agreement attached to the application in this case and will report the results of a special meeting of the Association membership conducted on January 29, 2007. Additionally, I will be addressing how approval of this asset transfer will benefit the public interest.

The Asset Purchase Agreement

1 Q. **Attached as Appendix 1 to the Application is an Agreement For Sale And Transfer**
2 **Of Water Distribution System And Wastewater System (the Agreement). Who are**
3 **the parties to the Agreement?**

4 A. Folsom Ridge LLC and the Association are collectively the Sellers under the Agreement
5 and two new nonprofit companies organized by Big Island residents are the Buyers. The
6 names of the new nonprofit companies are Big Island Sewer Company, and Big Island
7 Water Company. Both have been organized under sections of Chapter 393, RSMo
8 respecting nonprofit water and nonprofit sewer companies (the "393 Companies").
9

10 Q. **Who organized the new 393 nonprofit corporations?**

11 A. Pam Holstead, along with Gail Snyder, Don Bracken, Bill Burford, and Jim Grayum, all
12 property owners or local residents on Big Island, organized the companies and are now
13 members of the board of directors for the companies.
14

15 Q. **Will Folsom Ridge or the Association be affiliated with the 393 Companies.**

16 A. No, they will not. The 393 Companies will be independent of Folsom Ridge or any
17 developer. Also, the voting in the 393 Companies will be different from the right to vote
18 in the Association. The Association follows a "one vote per lot" rule. The 393
19 Companies follow a "one vote per customer" rule. In this way the 393 Companies are
20 customer controlled.
21

22 Q. **Can Folsom vote as a member of the 393 Companies?**

1 A. Yes, it could but only as a customer. For example, Folsom would have a vote for each
2 residence it owned (on separate lots) that was connected to and taking service from the
3 system. If Folsom has only one residence connected to a system, it would have only one
4 vote in the 393 Company even though it might own many more unoccupied lots in the
5 service area. Currently Folsom Ridge owns 2 homes and 6 villas. All of these are for
6 sale.

7
8 Q. **Why are both Folsom Ridge and the Association joining in the Agreement as**
9 **Sellers?**

10 A. The Association has been operating the water and sewer systems for some time and
11 maintains the system accounts. Title to the components of the systems and easements has
12 remained in the name of Folsom Ridge LLC. Both parties are joined in the agreement to
13 transfer all rights each may have in the systems and to transfer the Association's rights in
14 the various accounts.

15
16 Q. **What is being transferred under the agreement?**

17 A. Folsom and the Association will join in transferring their interests, as they appear, to the
18 following described items:

- 19
20 • All wastewater collection lines metering devices, pumps of any kind or description,
21 lift stations, pipes or lines (buried or otherwise), treatment plants or basins and any
22 appurtenant equipment and material, which are used or useful in the collection,
23 transportation, delivery and treatment of wastewater in or for Big Island (the

1 Wastewater Assets). The Wastewater Assets will be transferred to Big Island Sewer
2 Company.

- 3
- 4 • All water wells, water treatment facilities, metering devices, pumps of any kind or
5 description, storage or retention basins, pipes or lines (buried or otherwise), as built
6 drawings and any appurtenant equipment and material, which are located in, or are
7 used or useful in the provision, delivery and distribution of water in, to or for Big
8 Island (the Water Assets). The Water Assets will be transferred to Big Island Water
9 Company.

- 10
- 11 • All real estate on which the treatment plant and water wells are located and all
12 easements in which lines are located.

- 13
- 14 • All accounts, accounts receivable and reserve accounts, if any, related to the
15 provision of water and sewer service.

16

17 **Q. You mentioned reserve accounts. Has the Association kept funds in reserve for**
18 **operational or maintenance contingencies?**

19 **A,** The Association has a reserve account for purposes of defraying or covering costs of
20 unexpected equipment or material needs or other unanticipated expenses in the operation
21 and maintenance of the system. At this time, the balance in that account is approximately
22 \$7,000.00 and that account will be transferred to the 393 Companies.

23

1 **Q. Are Folsom or the Association receiving any monetary consideration for this**
2 **transfer?**

3 A. No, the assets are being transferred without charge to the 393 Companies. Charging for
4 the assets would increase costs for the 393 Companies and those costs would most likely
5 be incorporated into rates for service. However, a portion of tap permit fees collected by
6 the 393 Companies from certain homeowners or their successors in title over the next 10
7 years will be paid to Folsom as consideration for the transfer of assets owned by the
8 developer (this includes real estate). The households subject to this particular provision
9 will be identified on Exhibit E to the Agreement. That Exhibit has been classified as
10 Proprietary for the time being in order to prevent unfair disclosure of the identities of
11 those households.

12
13 **Q. There are some residents on the Island who have paid tap fees for connection to the**
14 **water or sewer system but have not yet connected. What will happen to them?**

15 A. Residents who have paid the tap fees for connection to the water and sewer systems but
16 who have not yet connected are still guaranteed the right to connect. The 393 Companies
17 have agreed to assume that obligation and responsibility. That obligation is expressed in
18 the bylaws of each company. Those bylaws are posted on the Missouri Office of Public
19 Counsel's website.

20
21 **Q. Is further development on the Island expected?**

1 A. Folsom Ridge has an approved development plan for the Island and expects to go forward
2 with that plan and others that are approved in the future. Main extensions for both
3 systems are contemplated as the development progresses.

4
5 **Q. Regarding the main extensions to the systems or other improvements to the systems**
6 **that may be required for future development, does the agreement set out who will**
7 **be responsible for the costs of constructing them?**

8 A. Yes. Any extensions of the systems will be done at Folsom's cost pursuant to extension
9 agreements with the 393 Companies. The extension agreement will require the extension
10 to be constructed in accordance with the bylaws of the affected 393 Company. No
11 extension will be accepted by the 393 Company unless approved by its engineer or other
12 qualified employee, agent or contractor. A specimen of an extension agreement is
13 attached to the Agreement as Exhibit G. This specimen provides for water main
14 extensions but the extension agreement for sewer main extensions will be substantially
15 similar if not identical.

16
17 **Q. What if Folsom or the 393 Companies later merge with other businesses or sell their**
18 **properties.**

19 A. The transfer agreement is binding on any successor in interest to Folsom, the Association
20 or the 393 Companies. The agreement must be followed by anyone who buys out or
21 merges with any of the parties.

22
23 **Q. How will DNR permits and other permits be transferred?**

1 A. The asset transfer will not close unless the 393 Companies have acquired the necessary
2 permits or other approvals from the Missouri Department of Natural Resources. It is
3 possible that the permits currently in force could be transferred or the 393 Companies
4 may need to apply for permits. The 393 Companies have started the process to acquire
5 the necessary permits from DNR.

6
7 **Q. After the transfer of the water and sewer assets, who will provide water and sewer**
8 **service?**

9 A. After transfer of the assets the 393 Companies will operate and maintain the systems and
10 will also bill and collect the rates and charges for service. I understand that the 393
11 Companies have reached agreement with Mr. Michael McDuffey of Lake Ozark Water
12 and Sewer LLC (LOWS) to operate and maintain the systems. Mr. McDuffey's firm
13 performs those duties currently and has been the contract operator ever since the systems
14 were activated. He and his firm are highly qualified to perform these tasks.

15
16 **Q. Do you know the rates for service proposed by the 393 Companies?**

17 A. I understand that based upon projections and a proposed budget which will be addressed
18 in separate testimony sponsored by the 393 Companies in this proceeding, the rates
19 proposed are \$14 per month for water and \$21 per month for sewer.

20
21 **Q. Has this transaction been approved by the Association?**

22 A. Yes, it has. Pursuant to written notice, a special meeting of the Association's
23 membership was scheduled on January 29, 2007 at Central Bank of the Lake of the

1 Ozarks. In advance of that meeting, the board of directors of the Association mailed
2 proxy forms to the membership for use by members who were unable to attend the
3 meeting. On the proxy, and at the meeting, the members were asked to vote either in
4 favor or against the following resolution:

5 Resolved, that the officers and directors of the Association are authorized
6 to enter into an agreement with Big Island Water Company, Inc. and Big
7 Island Sewer Company, Inc. transferring to those companies all of the
8 Association's right, title and interest, if any, in the real estate, material,
9 equipment or other property used by the Association, or useful to the
10 Association, in the provision of water and sewer service, including the
11 Association's right, title and interest in all accounts receivable, reserve
12 accounts or other accounts related thereto (the Water and Wastewater
13 Assets).

14
15 It is further Resolved that the Association may join Folsom Ridge LLC, or
16 any other party that may have an interest in the Water and Wastewater
17 Assets, as a selling or granting party in the agreement.
18

19 **Q. What were the results of the vote?**

20 **A.** The resolution was adopted. The vote can be broken down in several ways. The
21 Association tabulated the vote by customers actually connected to the systems. There are
22 at this time a total of sixty-one (61) customers connected to the wastewater system and 49
23 customers connected to the water distribution system. Of the customers connected to the
24 systems 50 voted in favor of the resolution and 5 voted against. The percentage in favor
25 was 81.97% of those customers connected to the system.

26
27 There are 92 customers that are billed by the Association. Of the customers billed by the
28 Association 70 voted in favor of the resolution. Thirteen (13) voted against. The
29 percentage in favor was 76.09% of the total billed by the Association.

1

2 The Association tabulated the votes by the number of owners of property on the Island.

3 According to the Association's records, there are 105 owners of property on the Island.

4 Of those 105 owners 73 owners voted in favor and 16 owners voted against. The
5 percentage in favor was 69.53% of all owners of property on Big Island.

6

7 **The Association**

8 **Q. Why was the Association formed?**

9 A. The primary purpose of the Association is to operate and maintain the utilities, essentially
10 the water and sewer utilities, within the real property described in the Declarations of
11 Covenants and Restrictions, as amended which are recorded at Book 508, Page 587 of the
12 records of the Camden County Records Office. As part of its purposes it bills and
13 collects for water and sewer services supplied to members. The Association was
14 designed to serve as a governing body over connection to the systems, maintenance of the
15 systems and their improvement as needed.

16

17 **Q. Does Folsom own any stock or any property of the Association.**

18 A. The Association is not a "for profit" or stock corporation. Folsom Ridge has no
19 ownership interest in the Association. It is a member of the Association by virtue of its
20 ownership of lots covered by the Declaration of Covenants and Restrictions.

21

22 **Q. Has the Association ever declared a dividend to Folsom or any members?**

1 A. No. The Association is strictly a not for profit entity. It was not established for gain to
2 Folsom Ridge or gain to itself. The concept was for members to have a special interest in
3 the operation, ownership and control of the water and sewer systems on Big Island that
4 would be a benefit or gain to each, very much like a cooperative.

5
6 Q. **Has Folsom ever received a fee, commission or any remuneration from the**
7 **Association out of the rates for service charged by the Association.**

8 A. No, the rates charged by the Association have been designed to recover the actual costs
9 (not costs plus a profit mark up) of operating and maintaining the systems. Those costs
10 include the contract operator's charges, the cost of billing and the cost of permits required
11 by environmental and other agencies. Any excess revenue received above those costs is
12 retained for future liquidity and working capital. None is rebated to Folsom Ridge or to
13 the members.

14
15 Q. **Does the Association offer water and sewer services to anyone outside the real**
16 **property described in the Declaration of Covenants and Restrictions.**

17 A. Yes, it does but the offer of water and sewer service is limited to the facilities that have
18 been installed. The Association does not offer water and sewer service to the public
19 generally; just those persons whose property is proximate to the water mains and
20 wastewater collection lines installed for the systems and who have agreed to pay the
21 required tap on fees.

22

1 **Q. You earlier testified that there are now 61 customers connected to the wastewater**
2 **system and 49 customers connected to the water distribution system. Has this been**
3 **the customer count since the systems were activated?**

4 **A. No, we have added customers over the years of operation. Attached to my testimony as**
5 **RR Schedule 1 the Commission will find a chart showing the number of connected**
6 **customers the Association had by the end of each year of the systems' operations. The**
7 **chart begins with the year calendar year 2000 and ends with the first quarter of 2007.**

8

9 **Q. Does this conclude your direct testimony?**

10 **A. Yes.**

RR SCHEDULE 1
TO DIRECT TESTIMONY
CASE NO. WO-2007-0277

Association Water and Sewer Connections by Year of Operation

Year	2000	2001	2002	2003	2004	2005	2006	2007
Sewer	22	25	34	43	51	58	61	61
Water	15	18	27	35	40	45	49	49