

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

Cathy J. Orler,	)	
Complainant,	)	
	)	
v.	)	<u>Case No. WC-2006-0082, et al.</u>
	)	
Folsom Ridge, LLC, (Owning and Controlling	)	
the Big Island Homeowners' Association),	)	
Respondents.	)	
	)	
In the Matter of the Application of Folsom	)	
Ridge, LLC., and Big Island Homeowners'	)	
Water and Sewer Association, Inc., for an	)	
Order Authorizing the Transfer and Assignment)	)	<u>Case No. WO-2007-0277</u>
of Certain Water and Sewer Assets to Big	)	
Island Water Company and Big Island Sewer	)	
Company, and in Connection Therewith	)	
Certain Other Related Transactions	)	

**COMPLAINANTS' POST-HEARING BRIEF AND**  
**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF**  
**LAW**

COMES NOW, the Complainants, Cathy Orlor, Benjamin D. Pugh, and Cindy Fortney, to state to the Missouri Public Service Commission, their Brief, as follows:

**SUMMARY AND OVERVIEW**  
**CASE NO. WC-2006-0082, ET AL.**

In August and September of 2005, 9, (nine), individual Formal Complaints were filed against the Developer, Folsom Ridge, LLC, Owning and Controlling the Big Island Homeowners' Association, (BIHOA), by residents of the Big Island community of the Lake of the Ozarks, located in Camden county, in Roach, Missouri. The Complaints alleged that Folsom Ridge, LLC, a property development company, was operating a water and sewer utility system, that should be subject to regulation as a public utility, by billing and providing service to individuals of the public, without a certificate of convenience and necessity from the Missouri Public Service Commission. Furthermore, the Complaints alleged that the homeowners association, established by Folsom Ridge, was merely a captive entity doing the bidding of Folsom. As the case progressed, Big Island Homeowners Water and Sewer Association, (f/k/a BIHOA), was added as a separate respondent.

An Evidentiary Hearing was held in this case February 28, 2007 through March 02, 2007. Case number WO-2007-0227 was combined with case number WC-2006-0082 for hearing. An ancillary hearing was held on March 30, 2007

**I. THE FIRST PRIMARY ISSUE IN CASE NO. WC-2006-0082:**

1. Are Folsom Ridge, LLC or BIHOA, or both of them, a public utility pursuant to 386.020(42), RSMo Supp. 2006, and thus subject to the

jurisdiction, control and regulation of the Missouri Public Commission pursuant to 386.250, RSMo Supp. 2006?

**COMPLAINANTS' FINDINGS OF FACT OFFERED AS ARGUMENT TO  
SUPPORT THE FIRST PRIMARY ISSUE**

The BIHOA is not a legitimate homeowners association. It is an entity that is controlled not by the homeowners, but rather by Mr. Golden and Mr. Rusaw, the same individuals that own and control Folsom Ridge, LLC. By billing and/or providing service to the public, (non-members of the BIHOA), Folsom Ridge and the BIHOA are operating as public utilities, by definition, pursuant to Section 386.020(42) RSMo Supp. 2006; and respectively by definition as separate entities as a "water corporation" pursuant to Section 386.020(58) RSMo, and as a "sewer Corporation," pursuant to 386.020(48) RSMo.

Folsom Ridge and the BIHOA are billing and/or providing service to individuals of the public, who are non-members of the BIHOA. (Evidence Exhibit #62, #43, #76.)

- a. Non-members of the BIHOA, "hooked up," and receiving water and/or sewer service, are being billed by the BIHOA. (Evidence Exhibit # 62.)
- b. Non-members of the BIHOA, "not hooked up," and not receiving water and/or sewer service, are being billed by the BIHOA. (Evidence Exhibit # 62.)
- c. The BIHOA receives payments from non-members. (Evidence Exhibit # 43 and #76.)

- d. Folsom Ridge received payment for the sale/purchase of water and sewer tap connections from individuals of the public:

"Payment of Funds. Agent hereby agrees to pay over to Developer all money held by it hereunder at such time as the system is complete, in place, and operational." (Evidence Exhibit # 23 – Escrow Agreement; page 2, #2.)

The BIHOA, in its operation as a public utility, is being controlled by Mr. Golden and Mr. Rusaw of Folsom Ridge. (Evidence Exhibit #12 – BB Schedule 6; pages 1, 9. "Amended and Restated Declaration of Covenants and Restrictions of the BIHOA.")

- a. "WHEREAS, Declarant, (Folsom Ridge), desires to declare and establish certain covenants and conditions regarding water service and sewer service and related equipment, now owned by Declarant, to serve such Property
- b. Section 2. Voting Class. "...all Owners shall be entitled to one vote for each Lot owned or connected to either the Water System or the Sewer system." (Mr. Rick Rusaw has provided verbal testimony, stating that Folsom Ridge votes over 300 lots. (Trans. Vol. ?; page 584, line 19 – page 585, line 11.)
  - b.) Folsom Ridge as Owner in excess of 300 lots, votes in excess of 300 votes. (Trans. Vol.6; Page 585; Lines 2 – 10.)
- c. Section 4. Board of Directors. The Board of Directors shall consist of five, (5), Directors, who shall be members of the Association or an officer, director, manager or partner of an Owner or its partner, or an employee, manager or designee of Declarant, (Folsom

Ridge). For a period ending September 01, 2006, Folsom Ridge, LLC., or its successors, shall be entitled to appoint three, (3), Directors of the Board of Directors

Folsom Ridge and the BIHOA as public utilities, are thus subject to the jurisdiction, control and regulation of the Missouri Public Commission pursuant to 386.250, RSMo Supp. 2006.

**2. SECONDARY ISSUE 1A IN CASE NO. WC-2006-0082:**

1A.) Is Folsom Ridge a water corporation pursuant to 386.020(58). RSMo Supp. 1006, in that it owns, controls, operates, or manages a water system, plant or property and distributes, sells or supplies water for gain?

**COMPLAINANTS' FINDINGS OF FACT OFFERED AS ARGUMENT TO  
SUPPORT 1A SECONDARY ISSUES**

Documents entered into evidence, confirm that the utility and its management, operation, administration, and ownership is not independent of the developer, and Folsom Ridge does own, control, operate, and manage a water system, plant or property and distributes, sells or supplies water for gain, pursuant to 386.020(58). RSMo Supp. 1006.

- a. The Amended and Restated Covenants and Conditions of the BIHOA, state that Folsom Ridge owns the equipment related to water and sewer service. (Evidence Exhibit #12 – BB Schedule 6; pages 1. “Amended and Restated Declaration of Covenants and Conditions of the BIHOA.”)
- b. The Agreement for Sale and Transfer of Water Distribution System and

Wastewater System, states that Folsom and the Association are collectively the owner of the Big Island Water System and the Big Island Wastewater System. (Evidence Exhibit # 20.)

- c. Folsom Ridge received payment/gain for the sale/purchase of water and sewer tap connections from individuals of the public:

"Payment of Funds. Agent hereby agrees to pay over to Developer all money held by it hereunder at such time as the system is complete, in place, and operational." (Evidence Exhibit # 23 – Escrow Agreement; page 2, #2.)

- d. Folsom Ridge installed the necessary infrastructure to develop their land for sale/gain. (Evidence Exhibits # 12 – page 2; lines 14 – 15.) The resulting increase in property values, proportionate to the number of lots owned and voted by Folsom Ridge, and subject to fees assessed individuals/lots not connected and not receiving service, proves substantial monetary gain. (Evidence Exhibits # 76 and #43.)

3. SECONDARY ISSUE 1B IN CASE NO. WC-2006-0082:

- 1B.) Is BIHOA a water corporation pursuant to 386.020(58), RSMo Supp. 2006, in that it owns, controls, operates, or manages a water system, plant or property and distributes, sells or supplies water for gain?

**COMPLAINANTS' FINDINGS OF FACT OFFERED AS ARGUMENT TO  
SUPPORT 1B SECONDARY ISSUES**

Documents entered into evidence, confirm that the BIHOA in its management, operation, and administration, is a water corporation pursuant to 386.020(58), RSMo Supp. 2006, in that it owns, controls, operates, or manages a water

system plant, or property and distributes, sells or supplies water for gain, by billing individuals of the public, for no utility services received, and receiving compensation with no exchange for service. (Evidence Exhibit #43, #48, #50, and #62.)

**4. SECONDARY ISSUE 1C IN CASE NO. WC-2006-0082:**

1C.) Is Folsom Ridge a sewer corporation pursuant to 386.020(48), RSMo Supp. 2006, in that it owns, controls, operates, or manages a sewer plant with twenty-five or more outlets and is in the business of collecting, carrying, treating, or disposing of sewage for gain?

**COMPLAINANTS' FINDINGS OF FACT OFFERED AS ARGUMENT TO  
SUPPORT 1C SECONDARY ISSUES**

Documents entered into evidence, confirm that the utility and its management, operation, administration, and ownership is not independent of the developer. Folsom Ridge is a sewer corporation pursuant to 386.020(48), RSMo Supp. 2006, in that it owns, controls, operates and manages a sewer plant with twenty-five or more outlets and is in the business of collecting, carrying, treating, or disposing of sewage for gain.

- c. The Amended and Restated Covenants and Conditions of the BIHOA, state that Folsom Ridge owns the equipment related to water and sewer service. (Evidence Exhibit #12 – BB Schedule 6; page 1. “Amended and Restated Declaration of Covenants and Conditions of the BIHOA.”)
- d. The Agreement for Sale and Transfer of Water Distribution System and Wastewater System, states that Folsom and the Association are collectively the owner of the Big Island Water System and the Big Island

Wastewater System. (Evidence Exhibit # 20.)

- e. There are currently sixty-one (61), customers receiving sewer service. (Evidence Exhibit # 12 – page 14; line 17.)
  - f. There are additional individuals of the public, who are not customers of the utility, being billed for no services received. (Evidence Exhibits #76 and #43.)
  - g. Folsom Ridge received payment/gain for the sale/purchase of water and sewer tap connections from individuals of the public:  
“Payment of Funds. Agent hereby agrees to pay over to Developer all money held by it hereunder at such time as the system is complete, in place, and operational.” (Evidence Exhibit # 23 – Escrow Agreement; page 2, #2.)
  - H. Folsom Ridge installed the necessary infrastructure to develop their land for sale/gain. (Evidence Exhibits # 12 – page 2; lines 14 – 15.)  
The resulting increase in property values, proportionate to the number of lots owned and voted by Folsom Ridge, and subject to fees assessed individuals/lots not connected and not receiving service, proves substantial monetary gain. (Evidence Exhibits # 76 and #43.)
5. **SECONDARY ISSUE 1D IN CASE NO. WC-2006-0082:**
- 1D.) Is BIHOA a sewer corporation pursuant to 386.020(48), RSMo Supp. 2006, in that it owns, controls, operates, or manages sewer plant with twenty-five or more outlets and is in the business of collecting,



carrying, treating, or disposing of sewage for gain?

**COMPLAINANTS' FINDINGS OF FACT OFFERED AS ARGUMENT TO  
SUPPORT 1D SECONDARY ISSUES**

Documents entered into evidence, confirm that the BIHOA in its management, operation, administration, is a sewer corporation pursuant to 386.020(48), RSMo Supp. 2006, in that it owns, controls, operates and manages a sewer plant with twenty-five or more outlets and is in the business of collecting, carrying, treating, or disposing of sewage for gain, by billing and receiving compensation from individuals of the public who are not members of the BIHOA and/or receiving any type of service. (Evidence Exhibit #43, #48, #50, and #62.)

- a. There are currently sixty-one (61), customers receiving sewer service.  
(Evidence Exhibit # 12 – page 14; line 17.)

**1. THE PRIMARY ISSUE IN CASE NO. WC-2007-0277:**

Would Applicant's proposed transfer of the water and sewer assets to Big Island Water Company and Big Island Sewer Company be detrimental to the public interest?

**COMPLAINANTS' FINDINGS OF FACT OFFERED AS ARGUMENT TO  
SUPPORT THE PRIMARY ISSUE**

The proposed transfer of the water and sewer assets to Big Island Water Company and Big Island Sewer Company would be detrimental to the public.

1. The vote of the BIHOA, is controlled by Folsom Ridge through the voting of lots. The vote to transfer the utility assets to the 393 Companies, was controlled by Folsom Ridge. Folsom Ridge controls the vote of the