

Folsom Ridge Votes in excess of 300 lots. (Trans. Rusaw Vol. 6; Page 585, Lines 2 – 10.)

It would be detrimental to the public to transfer the utility assets, without an independent vote of the residential property owners.

2. There were no meetings of the 393 Companies open to the public. (Trans. Snyder Vol.7; Part. 2; Page 958, Lines 3 – 18.)

It would be detrimental to the public to transfer utility assets, without a public meeting being held.

3. Bylaws of the 393 Companies were not made available to the public, thirty days before the vote to transfer the utility assets. (Trans. Merciel Vol. 7; Part. 2; Page 1052, Lines 1 – 6.)

It would be detrimental to the public to transfer utility assets, without documents associated with the transfer, being made public, thirty days prior to the vote.

4. The filing requirements, 4 CSR 240 – 3.310, for Sewer Utility Applications for Authority to Sell, Assign, Lease or Transfer Assets and the filing requirements, 4 CSR 240 -3.605, for Water Utility Applications for Authority to Sell, Assign, Lease or Transfer Assets, have not been met, and therefore detrimental to the public.

- (1) In addition to the requirements of 4 CSR 240-2.060(1), applications for authority to sell, assign, lease or transfer assets shall include:
  - (A ) A brief description of the property involved in the transaction, including any franchises, permits, operating rights or certificates of

convenience and necessity;

- (F) A statement of the impact, if any the sale, assignment, lease or transfer of assets will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the companies involved in that sale are located.

6. Evidence Exhibit #20 – “Joint Application for Approval of Transfer of Assets to Nonprofit Companies Organized Under Chapter 393,RSMO,” also includes an “Agreement for Sale and Transfer of Water Distribution System and Wastewater System,” which includes a description of the specified Service Area to which water and sewer service is to be provided, as described in and attached thereto as Exhibit A. However, the Real Estate and Easements, right-of-ways, and other present interests in real property acquired by Seller and used or useful in Sellers’ collection, transportation and treatment of wastewater or delivery and distribution of potable water, as described in the warranty deed and attached thereto as Exhibit C, is incomplete and information has been omitted from evidence.

It is detrimental to the public, if the real estate being transferred as a part of this proposed transfer of assets, is not disclosed.

7. Evidence Exhibit #20 - “Joint Application for Approval of Transfer of Assets To Nonprofit Companies Organized Under Chapter 393,RSMO:” Page 4 – Item #11; states; “The transfer and assignment of these assets may have an impact on the tax revenues of the Missouri political subdivisions in which any structures, facilities or equipment involved are located, but the extent of that impact has not been quantified.”

It is detrimental to the public, if the impact on tax revenues, is not disclosed.

Furthermore, because the Service Area affected by the transfer of utility assets, includes numerous political subdivisions, (Evidence Exhibit # 23 – Escrow Agreement.) and is not exclusive to a single political subdivision, and the real estate being transferred as a part of this proposed transfer of assets, has not been disclosed to specify which political subdivision(s) will be affected by the resulting, impacted tax revenues.

8. Evidence Exhibit #20 - "Joint Application for Approval of Transfer of Assets To Nonprofit Companies Organized Under Chapter 393,RSMO:" Page 3 – Item #8 states: "The operations of these systems are the subject of complaints pending in Case No. WC-2006-0082. The transactions contemplated by this application are designed to eliminate further disputes respecting the proper entity that provides and charges for water and sewer services. Further disputes will not be eliminated.

The proposed transfer of utility assets to the Big Island Water Company and the Big Island Sewer Company, will be detrimental to the public, as the Big Island Water Company and the Big Island Sewer Company are named as Defendants in Circuit Court Case No. 07CM-CC00040, involving the assets of this utility. (Evidence Exhibit # 36.)

9. It will be detrimental to the public to transfer the utility assets, without "...allowing residents within the Big Island Service Area from voicing their objections, beliefs or opinions before any governmental entity on any issue that may affect that person in his or her capacity as a resident or property owner on Big Island." (Evidence Exhibit #20 - "Joint Application for Approval of Transfer of Assets To Nonprofit Companies Organized Under Chapter 393,RSMO," and attached thereto, "Agreement for Sale and Transfer of Water Distribution System and Wastewater System," – Page 7; Item # B.)

10. It will be detrimental to the public to transfer utility assets to the 393 Not for profit Companies. The utility system is not in Compliance with MDNR regulations, and the 393 Companies are receiving utility assets, "AS IS:"

(a.) The 393 Companies are receiving the utility assets, "AS IS." (Evidence Exhibit #20 - "Joint Application for Approval of Transfer of Assets To Nonprofit Companies Organized Under Chapter 393,RSMO," and attached thereto, "Agreement for Sale and Transfer of Water Distribution System and Wastewater System," – Page 4; Item # F.)

This utility system is not in compliance with MDNR regulations:

(1 – a.). A one inch line is servicing two, (2), homes. (Trans. Crowder; Vol. 8; Page 1158; Lines 1 – 25.)

(1 – b.) MDNR regulations require two inch line to service more than one home. The servicing of more than one home, by a single line, makes the line by definition a main, which must be at least two inch line, and receive prior approval by the Department. (Evidence Exhibit # 59.)

(2 – a.) The term main "trunk-extensions," is confirmed by Mr. Crowder to be the: "Ten- foot separation coming across the road." (Trans. Crowder; Vol. 8; Page 1224 Lines 12 – 16.)

(2 – b.) This line coming across the road is included as a part of the water distribution system and subject to the separation of water and sewer line construction policy, as

a part of the Phase I Replacement Waterline.  
(Evidence Exhibit # 116 – DNR Report on Plans,  
Specifications and an Engineering Report for Waterline  
replacement and Extension.”)

- (2 – c.) Main “trunk-extensions,” come within 10 feet of sewer lines. (Trans. Crowder; Vol. 8; Page 1159; Lines 14 – 17.) and Page 1172; Lines 11 – 25.)
- (3 – a.) Any variations from the minimum ten-foot separation, must be approved by DNR. (Trans. Crowder; Vol. 8; Page 1218; Lines 22 – 25, and Page 1219; Lines 1 – 5.)
- (3 – b.) NO DNR approved variations were submitted as evidence to support a less than minimum ten-foot separation of water and sewer lines that currently exist with this system.

The Missouri Public Service Commission, if regulating this utility, would want to ensure the proper separation of the water and sewer lines. (Trans. Merciel; Vol. 7; Ppt 2; Page 1287; Lines 21 -25.)

11. Pamela Holstead, President of the 393 Companies, is not neutral to the Developer. Ms. Holstead has stated that: “developers should not be required to adhere to the one vote per customer rule and should instead be permitted to utilize the one vote per lot rule.” “I believe PSC guidelines should be altered in new development situations to allow one vote per lot instead of one vote per customer, as I believe that is in the public’s best interest.” (Evidence Exhibit #39.)

12. Pursuant to RSMO 393.900-393.951 – “Any owner of real property located

within the Big Island Service Area, who is connected to the community water and/or sewer system owned and operated by the Company, is thereby a member.” Membership in the 393 Companies is imposed as a condition to receive service. 393 Companies’ Bylaws require members to be customers of both the water and sewer to be eligible to serve as Board Members. (Evidence Exhibit #101 – Page 33; Article XII. Board of Directors, Item B.)

(5 – a.) Members are discriminated against holding board positions, unless members are customers of both the water and sewer. Existing residents within the service area with private wells, who are sewer customers only, are discriminated against. (Evidence Exhibit #110 – Sewer System, Exhibit C; individuals connected to the sewer system and Water System, Exhibit C; individuals connected to the water system.)

The practice of discrimination by the 393 Companies is detrimental to the public.

12. The requirement of the 393 Water Company Bylaws, to cap the private wells of water customers, does not address the issue of more than one individual property owner sharing a private well with another individual property owner(s), when making the requirement to cap a private well, when one of the individuals become a 393 Company water customer. (Evidence Exhibit #110 – Water System, Page 11; Article XII – New Customers with Taps in Place and Article XIII – New Customers with no pre-existing Tap in Place.)

This issue is detrimental to the public.

13. In “The Agreement for Sale and Transfer of Water Distribution System and

Wastewater System," there is no provision for "Folsom," as a successor, in the event that "Folsom," sells its real estate interests in the Big Island development regarding the ten year future obligation of the 393 Companies to pay tap fee charges to "Folsom." (Evidence Exhibit # 20 – "Joint Application for Approval of Transfer of Assets to Nonprofit Companies Organized Under Chapter 393,RSMO," also includes an "Agreement for Sale and Transfer of Water Distribution System and Wastewater System.")

This issue is detrimental to the public.

#### COMPLAINANTS' CONCLUSION IN CASE NO. WC-2006-0082

Complainants agree that Folsom Ridge and the BIHOA are both, public utilities subject to the Commission's jurisdiction, and should be regulated as such.

Complainants are still in agreement that the utility of Big Island should be regulated as a public utility by the Missouri Public Service Commission; operated, managed, and administered by a certificated company and/or individual, independent of any associations and/or affiliations with Folsom Ridge, (Mr. Golden and Mr. Rusaw), or any of its agents or representatives.

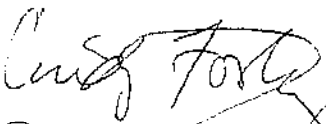
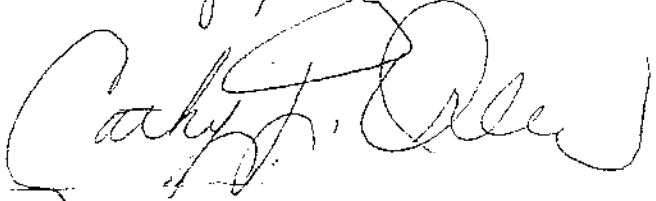
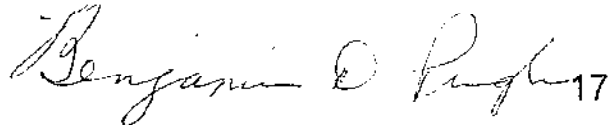
Complainants also agree that should the Commission rule to certify Folsom Ridge, certification should be contingent on conditions as specified by the staff and Complainants, and imposed by the Commission with the granting of the certification. In addition, any conditions imposed with certification, should be personally signed and agreed to by Mr. Golden and Mr. Rusaw, in the event Folsom Ridge, (Mr. Golden and Mr. Rusaw), should sell the utility's

assets. Furthermore, in the event that Folsom Ridge, (Mr. Golden and Mr. Rusaw), should sell the utility's assets, any and all conditions imposed with certification, should be required to be completed and fulfilled, as previously agreed.

COMPLAINANTS' CONCLUSION IN CASE NO. WO-2007-0277

Complainants agree that the Commission's approval to transfer of utility assets to the 393 Not for profit Water Company and the 393 Not for profit Sewer Company, would be detrimental to the public. The lack of utility regulation, has resulted in these cases before the Commission. To transfer the utility assets, and the liabilities associated with them from one unregulated entity to another, can not ensure that safe and adequate utility service can be provided effectively and efficiently, to the residents of Big Island, by the 393 Companies. Complainants also agree that there are no conditions that could be imposed by the Commission, on the transfer of utility assets to the 393 Companies, that would alleviate the detriment to the public. Any conditions imposed by the Commission, on the transfer of assets to the 393 Companies, can not be enforced by the Commission. The 393 Water and Sewer Companies are not regulated entities, and as such, are not within the jurisdiction of the Missouri Public Service Commission, to enforce any conditions that might be placed on the transfer of assets.

Respectfully submitted,

  
  
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### Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via U.S. Mail, on this 1st day of May 2007, postage prepaid to: Mark W. Comley, 601 Monroe Street, Suite 301, P.O. Box 537, Jefferson City, MO. 65102; and Charles E. McElyea, 85 Court Circle, P.O. Box 559, Camdenton, MO. 65020. True and correct copies of this document were also sent via E-Mail on this same date to: General Counsel's Office at [gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov); and Office of Public Counsel at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov).

Copies of this document were sent via E-mail, or U. S. Mail, or hand delivered to:

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