

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

In the Matter of the Application of)	
Big Island Water & Sewer Company, Inc.)	
for a Certificate of Convenience and)	Case No. WA-2006-0480
Necessity authorizing it to construct,)	
install, own, operate, control, manage,)	
and maintain a water and sewer system)	
for the public located in an unincorporated)	
area in Camden County, Missouri)	

**APPLICANT’S RESPONSE AND OBJECTIONS
TO MOTIONS TO INTERVENE**

COMES NOW, Big Island Water & Sewer Company, Inc. (hereinafter “Big Island” or “Company”), and submits the following to the Commission:

1. On June 16, 2006, Big Island filed an application with the Commission, pursuant to Section 393.170, RSMo 2000, requesting that the Commission grant it authority to provide water and sewer service to an unincorporated portion of Camden County, Missouri known as Big Island, which is located along the shores of the Niangua Arm of the Lake of the Ozarks.

2. On June 19, 2006, the Commission entered an order directing that any proper person wishing to intervene should file an application to do so no later than July 10, 2006.

3. Sixteen motions/applications to intervene were filed by the July 10, 2006 deadline. Six of those motions were filed by persons who are also complainants in consolidated Case No. WC-2006-0082. The balance of the motions/applications were filed by individuals who have alleged that they are property owners in the area sought to be certificated. They, or their tenants, are therefore potential customers of the utility.

4. Under Commission rule 4CSR 240-2.070 (4),

[t]he commission may on application permit any person to intervene on a showing that ---

(A) The proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

**RESPONSE TO INTERVENTION REQUESTS FILED BY COMPLAINANTS
AND SUGGESTIONS OPPOSING MR. SCHRADER'S MOTION TO
INTERVENE**

5. Big Island filed the present application in response to the complaints averred in Case No. WC-2006-0082. Of the named complainants in that consolidated case, motions to intervene were filed by Cindy Fortney, Cathy J. Orlor, Benjamin D. Pugh, Joseph Schrader, Stan Temares and Ben F. Weir. Although it is arguable that the interests and issues raised by the complainants in their motions to intervene are no different from those shared by the general public, Big Island has no objection to their motions to intervene with the exception of the one filed by Mr. Joseph Schrader, an objection which will be addressed *infra*.

6. The complainants' motions to intervene contain allegations that are superfluous under the rule and if an answer to those allegations is deemed required, Big Island disputes and generally denies each and every one to the extent they oppose or are inconsistent with the assertions in Big Island's application.

7. Respecting Mr. Schrader's motion to intervene, he does not allege that he is a property owner or resident of Big Island. Based upon counsel's information and belief, Mr. Schrader has no property on Big Island and lives permanently in the state of Florida. Any decision the Commission may render in this case will not affect Mr. Schrader. There is no connection between the state of Missouri's power to regulate Big Island and the state of Florida. Mr. Schrader's citizenship in the state of Florida alone does not afford him standing to intervene. He has no interest at stake in this proceeding; and if there is an interest it is so remote that it

requires no voice in this proceeding. His motion/application should be denied.

OBJECTIONS TO REMAINING APPLICATIONS TO INTERVENE

8. Applications to intervene were also filed by Bernard J. Beaven, Don Deckard, Elaine and William Foley, Mark and Deborah Hesley, Stephen Kleppe, Joseph Geary Mahr, Arthur Nelson, Eugene Prather, Jerry Steinhour and Donald and Frances Weast (the Ten Applicants). Each of these applicants, excepting Mr. Kleppe, submitted their requests on the same form, one that was apparently circulated for their signature.

9. Nine of the applicants claim that they are property owners on Big Island and are concerned about their property values and the safety of the drinking supply for them and their neighbors. They all are unable to formulate a position on the application. They have unidentified questions to which they want complete answers regarding the application. Mr. Kleppe states that he owns several properties on Big Island and lists reasons why in his opinion the Company should not receive its certificate. He also has questions about the averments in the Company's application.

10. The motions or applications to intervene filed by the Ten Applicants also contain allegations that are superfluous under the rule and if an answer to those allegations is deemed required, Big Island disputes and generally denies each and every one to the extent they oppose or are inconsistent with the assertions in Big Island's application.

11. None of the Ten Applicants have shown a direct interest in this proceeding that differs from that of the general public. Furthermore, the interest each claims in the proceeding is already adequately represented first by the Office of Public Counsel, which has the responsibility by law to represent potential consumers of services supplied by water and sewer companies,

whether they be land owners in the service territory or not, and by the existing field of complainants who have also sought intervention. If their interests are already represented in the proceeding, the public interest would not be better served by their participation as intervening parties.

12. In the past, the Commission has cited with favor *Ballmer v. Ballmer*, 923 S.W.2d 365, 368 (Mo. App., W.D. 1996) with respect to interpretation of the Commission's rules on intervention.¹ The Commission's rule is similar to circuit court civil rules. The Court in *Ballmer* ruled:

The manner in which one not a party to an action may establish an interest in the subject matter of the dispute and protect that interest is by intervention. *State ex rel. Hughes v. Smith*, 485 S.W.2d 646, 651 (Mo.App.1972).

* * *

As the rule indicates, a would-be intervenor must meet three requirements in order to intervene as a matter of right: (1) an interest in the subject matter; (2) a disposition of the action that may impede the ability of the applicant to protect that interest; and (3) the applicant's interests are not adequately represented by the existing parties. *Whitehead v. Lakeside Hosp. Ass'n*, 844 S.W.2d 475, 479 (Mo.App., 1992). If an applicant meets these requirements, thereby satisfying the burden of proof, the right to intervene is absolute. *Id.* at 478-79. A motion to intervene may be denied if any one of the requirements is not met. *In re Estate of Potashnick*, 841 S.W.2d 714, 719 (Mo.App.1992).

Ballmer at 368.

13. A mere desire to be a party is not enough. Here the Ten Applicants cannot show that their interests differ from those of the general public. They cannot show that their interests are not already represented by other parties in this proceeding. Their applications to intervene should be denied.

WHEREFORE, on the basis of the above and foregoing, Big Island Water & Sewer

¹ See, *In the Matter of an Investigation into Various Issues Related to UtiliCorp United Inc.'s Gas Supply Services Department*, Order Denying Intervention, December 6, 2000, Case No. GO-2001-249.

Company, Inc. respectfully requests that the Commission deny the motions/applications to intervene submitted by Joseph Schrader, Bernard J. Beaven, Don Deckard, Elaine and William Foley, Mark and Deborah Hesley, Stephen Kleppe, Joseph Geary Mahr, Arthur Nelson, Eugene Prather, Jerry Steinhour and Donald and Frances Weast.

Respectfully submitted,

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ATTORNEYS FOR BIG ISLAND WATER AND SEWER
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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 e-mail on this 12th day of July, 2006, to General Counsel's Office at gencounsel@psc.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov and via U.S. Mail, postage prepaid, to:

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