

**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, et al.
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)	

**RESPONSE TO INTERVENORS' REQUEST
TO REJECT OR DENY APPLICATION**

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 Water & Sewer Company filed an application for a certificate of convenience and necessity to operate a water and sewer system on Big Island, located in Camden County. The Commission set July 12, 2006 as the deadline for intervention and applications to intervene were filed by 16 individuals, all of whom have been granted intervention.
2. On August 10, 2006, the Commission entered an order directing the Staff to prepare and file a proposed procedural schedule by August 25, 2006.
3. No hearings have been held in this case. No evidence has been introduced in this case except to the extent Big Island's verified petition and exhibits are evidence.
4. On August 10, 2006, Intervenor Benjamin Pugh filed a letter requesting that Big Island's application before the Commission be denied. In his filing, he refers to "numerous documents" that "the . . . Commission has received" showing violations purportedly committed by Folsom Ridge LLC.

5. On or about August 15, 2006, Intervenor Cathy Orlor filed a letter in which she requests that 1) the Company's application be denied; 2) a "receivership of this utility be appointed to an independent company;" and 3) that the case be set for hearing October 2 through October 6, 2006. Among other things, which will be discussed subsequently, she states that her requests are supported by documented evidence submitted in her complaint in Case No. WC-2006-0082.

6. Mr. Pugh's request and Ms. Orlor's requests are not in proper form under the rules of the Commission, are inappropriate at this stage of the proceeding, and most importantly are unsupported. Both should be denied.

Form of the Requests

7. The Commission has established a detailed rule respecting the filing of requests for relief which would summarily determine the issues without a hearing. Since both requests seem to rely upon purported evidence, they are of this type. Pursuant to 4 CSR 240-2.117:

(1) Summary Determination.

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination

upon all other parties not later than the date upon which the motion is filed with the commission.

(C) Not more than thirty (30) days after a motion for summary determination is served, any party may file and serve on all parties a response in opposition to the motion for summary determination. Attached thereto shall be any testimony, discovery or affidavits not previously filed that are relied on in the response. The response shall admit or deny each of movant's factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary determination, shall state the reason for each denial, shall set out each additional material fact that remains in dispute, and shall support each factual assertion with specific references to the pleadings, testimony, discovery, or affidavits. The response may also have attached thereto a legal memorandum explaining why summary determination should not be granted.

(D) For good cause shown, the commission may continue the motion for summary determination for a reasonable time to allow an opposing party to conduct such discovery as is necessary to permit a response to the motion for summary determination.

(E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

(F) If the commission grants a motion for summary determination, but does not dispose thereby of the entire case, it shall hold an evidentiary hearing to resolve the remaining issues. Those facts found in the order granting partial summary determination shall be established for purposes of the hearing.

(G) The commission may hear oral argument on a motion for summary determination.

8. Neither request for relief follows this rule. The requests are conclusory and lay opinion is widespread. There is no enumeration of any material facts not genuinely in dispute and no legal memorandum in support of the request. Compliance with the rule is virtually impossible at this stage in any event since there is no evidence of any kind in the case except the

allegations in the verified application of the Company.¹ Any documents, opinions and conclusions properly received or heard in Case No. WA-2006-0082 (and the Company's position is that there are none) have not been admitted (and are subject to the same objections) in this proceeding.

9. The basis claimed for each request is not supported by any evidence. Mr. Pugh's request refers to a Settlement Agreement reached between Folsom Ridge LLC and the Missouri Department of Natural Resources, purported violations of that agreement; construction permits issued by the same agency and his own conclusions about the processes. None of these constitute evidence.

10. Ms. Orler's request refers to "documented evidence previously submitted" in Case No. WA-2006-0082, that purportedly shows DNR violations, improper installation of facilities, reworking of facilities, unauthorized operation of a utility system, and a misrepresentation of some kind. She claims that "many questions have been generated with the inconsistencies of both the application and the feasibility study"² and she claims that requests from "complainants and interveners for specific documents . . . have not been honored."³ She asserts that certification of the Company would create a conflict of interest since there is common control of

¹ If the intervenors are of the state of mind that the case has progressed to the point that no issue of fact remains contested, then the only facts the Commission can legally base a decision on are those in the Company's application. On those grounds, the Company has cause to move for summary determination in its favor and pursuant to 4 CSR 240-2.117 makes the request with the understanding that the Commission has authority to defer ruling. 4 CSR 240-2.117 (D).

² No questions of this nature have been brought to the attention of the Company. There should be no question that the feasibility study supports the application.

³ All data requests in the complaint case were properly answered and all requests for data in this case will be, and are being, processed according to Commission rules. The parties which have failed to comply with the Commission's discovery rules have been the complainants in WA-2006-0082, some of whom have intervened here. See *Response to Ms. Orler's Objection to Request for Depositions and Motion for Sanctions*, Case No. WA-2006-0082 on June 20, 2006. The Company is hopeful that with the procedural schedule approved in this case, discovery will proceed without the groundless objections and obstructions the complainants raised in Case No. WA-2006-0082.

the Company and the developer in the vicinity.⁴ Just like Mr. Pugh's request, Mr. Orler's request suffers from a lack of evidentiary support. There is no evidence admitted in this case that supports any of these claims.⁵

11. The Commission should deny the requests on grounds they fail to comply with the Commission rules.

Timing of the Requests

12. The Commission has directed Staff to propose a procedural schedule for this case. The proposal is due for filing by August 25, 2006. The Company anticipates that the procedural schedule Staff and other parties propose will resemble those which the Commission has insisted upon in other purportedly contested certification proceedings so that the Company will be expected to supply direct testimony in support of its application, the other parties to file rebuttal to the same and the applicant allowed surrebuttal testimony, along with other deadlines including prehearing conference, a list of issues and witnesses and a proposed hearing date that reconciles with the Commission's calendar. The extent of the issues and any material facts to which no party has a dispute will not be satisfactorily known until the procedural schedule and its deadlines for testimony have run their course, and responses to data requests have been received.

13. Under the anticipated approved procedural schedule, the intervenors will have

⁴ The nature of the control of Big Island is not in evidence. Moreover, common control of a developer and the water and sewer utility serving the development has not been a disqualification for certification in this Commission. Furthermore, a developer's interests and the duties to supply adequate water and wastewater services to the development are quite harmonious.

⁵ Commission rules do not require a pleaded denial of these allegations, but in the exercise of caution under the circumstances, the Company pleads a general denial of each intervenor's allegations at this time given the vagueness of what Mr. Pugh and Ms. Orler attempt to allege in their respective requests. The Company's denial is plenary and is intended to cover all allegations and conclusions in the intervenors' requests even if a particular allegation or conclusion is not mentioned in this response.

their opportunity to testify and be cross examined. Whether their testimony will be admissible is not known. As yet, none have been examined under deposition, and no written testimony has been filed. There can be no determination at this stage of what matters are admitted and what matters are denied so that any form of summary relief can be entered. The requests should be denied.

The Request for a Receiver.

14. Ms. Orlor ends her letter to the Commission with a request for appointment of a receiver until 1) the development project on Big Island, Lake of the Ozarks is complete and 2) civil court issues involving Folsom Ridge LLC and its members are resolved.⁶ Appointment of receivers is governed by Section 393.145 RSMo 2000 which provides:

1. If, **after hearing**, the commission determines that any sewer or water corporation that regularly provides service to eight thousand or fewer customer connections is **unable or unwilling to provide safe and adequate service**, has been actually or effectively **abandoned by its owners**, or has **defaulted on a bond, note or loan** issued or guaranteed by any department, office, commission, board, authority or other unit of state government, the commission may petition the circuit court for an order attaching the assets of the utility and placing the utility under the control and responsibility of a receiver. The venue of such cases shall, at the option of the commission, be in the circuit court of Cole County or in the circuit court of the county in which the utility company has its principal place of business.

15. The Company is not yet a regulated entity. The Company has asked to commence service not abandon it. There has been no hearing. There is no suggestion that the service now rendered by the Big Island Homeowners Water and Sewer Association is unsafe or inadequate; that the owners have abandoned the system; that the present service provider is insolvent or in

⁶ Ms. Orlor does not specify what court proceedings are ongoing and what issues have been presented to a court. The Company knows of none.

default, to name but a few determinations critical to the statute. Mr. Orler's request to appoint a receiver is meritless.

Conclusion

Based on the above and foregoing, Big Island Water and Sewer Company, Inc. prays that the Commission deny Mr. Pugh's and Ms. Orler's separate requests to deny the application and requests for other relief.

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 21st day of August, 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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