

**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 TO INTERVENERS’ REQUEST TO THE COMMISSION
TO HALT THE PROCESS OF THE 393 NON FOR PROFIT WATER AND SEWER
CORPORATIONS**

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

1. On or about January 4, 2007, Joseph Schraeder, Stan Tamares, Cindy Fortney, Cathy Orlor and Benjamin Pugh, interveners in this matter (hereinafter “Interveners”), joined in a filing styled: *Interveners’ Urgent Request to the Commission to Halt the Process of the 393 Not For Profit Water and Sewer Corps* (hereinafter “Interveners’ Request”).¹ The title of the filing included unsupportable assertions not related to the caption or title and those assertions will not be included in this paragraph.

2. At the outset, Big Island observes that the interveners continue to be confused about the identity of the Applicant in this case. In paragraphs 1 and 2 of Interveners’ Request the applicant is identified as “Mr. Golden, Mr. Rusaw and Ms. Brunk.” In a document filed on or about December 8, 2006, the interveners did substantially the same thing. Mr. Golden, Mr. Rusaw and Ms. Brunk are not parties to this matter and have made no application to the Commission. Because the interveners persist in misidentifying the proper parties and the

¹ This filing made its way to the Commission electronic filing and information system, but it was not served on the Applicant. Applicant notes that the filing lacks a certificate of service.

Applicant in this case, their request of January 4, 2007 should be quickly discarded.

3. Furthermore, the interveners repeat arguments and conclusions that have no basis in fact, and offer legal conclusions as well. When referring to the “Big Island Homeowners Water and Sewer Association” they add the clause, “being owned and controlled by Folsom Ridge.” Folsom Ridge is a party to the complaint case filed by these interveners but is not a party here. In the complaint case² the Commission can lawfully find that undeniably Folsom Ridge has no ownership interest in the Association. It is a non stock, not for profit entity. Regarding control of the Association, management and control is vested by law in the Association’s board of directors. The nature of the “control” the interveners contend Folsom Ridge exercises has never been clearly defined. The relationship between Folsom Ridge and the Association is unimpeachably lawful.

4. They repeat what is no more than their argument that the water and sewer services provided on Big Island are not safe or adequate. There is no evidentiary support for this argument or this conclusion. They claim that the nonprofit water and sewer companies organized by Big Island residents and incorporated under provisions of Chapter 393³ are not “legitimate” but offer no facts, and no statutory or case authority to support that claim. As far as Applicant knows, they have been duly organized and validly exist under Missouri law. Intervenors offer no reasoning as to why nonparty corporate entities to this action should be given attention by the Commission.

5. The interveners seem to be claiming that “Ms. Holstead,” her proposal and the process is being “manipulated and coerced” by Mr. Golden and Mr. Rusaw. Again, there are no facts given in support of that statement; no explanation given why such a claim is important to

² Case No. WC-2006-0082.

³ See paragraphs 3-4 of Applicant’s Motion to Suspend Procedural Schedule filed in this case on December 6, 2006 for a description of the nonprofit companies.

the Commission's consideration of this case; no explanation is given why Ms. Holstead cannot speak out about this herself in a forum which has jurisdiction; and finally, no explanation how the Commission is authorized or empowered to act on the claim of "manipulation or coercion." Although none of the people purportedly involved in the manipulation or coercion are parties here, the Applicant will nonetheless advise the Commission that negotiations on the sale of the water and wastewater assets are at arms length and each party has the ability to acquire independent counsel.

6. On page 3, interveners enumerate five items they claim Ms. Holstead, a nonparty to this action, has not done. They do not explain how the Commission has any authority over Ms. Holstead's claimed inaction. The interveners offer no authority in support of a premise that Ms. Holstead is obligated to act in a certain way because they are interveners or complainants or simply members of the community at large. On the same page, interveners seem to be interpreting the provisions of a transfer agreement and recite conclusions of law and legal argument. They have no legal qualifications to begin with and furthermore, do not link up their legal conclusions with any power or authority of the Commission.

7. On page 4 of Interveners' Request, they add that the proposed sale of the water and sewer systems on Big Island to the Chapter 393 companies is "interfering with the cases before the Commission." On February 9, 2006, pursuant to Commission order, the Staff filed a report of its investigation in the complaint case and entered the following conclusions:

CONCLUSIONS

The Staff believes that either Folsom needs to file an application for a CCN to provide water and sewer service under the Commission's jurisdiction, **or that a group of customers needs to create appropriate 393 nonprofit water and sewer utility entities so that the utility systems may be operated in this manner.** Although 393 nonprofit utilities are not regulated by the Commission,

the Staff would be willing to assist the customers and Folsom regarding capital structure, rates and charges, and rules for pipeline extensions and system expansion for future development, as well as assisting as requested in the development of the 393 nonprofit utilities. [emphasis added]

The effort by residents on Big Island to seek ownership of the water and sewer utilities on the island through the lawful devices of Chapter 393 nonprofit companies is consonant with Staff's conclusions and recommendations. That is not an interference with this case or others.

8. The interveners request a Commission order "halting the process of the 393's [sic] corporations." Applicant interprets this to mean a request for an order enjoining the transfer of assets. This is very similar to a request interveners made in this case on October 5, 2006. Enjoining the exchange of property is a form of injunction which the Commission is powerless to enter. *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 75 - 76 (Mo.banc 1982) (the Public Service Commission has no power to declare any principle of law or equity). Only the courts can issue injunctions. On October 24, 2006, the Commission denied the interveners' request to freeze the assets. Nothing compels a different result in this case.

WHEREFORE, based upon the above and foregoing, Applicant requests the Commission to deny Interveners' Request.

Respectfully submitted,

/s/ Mark W. Comley

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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 11th day of January, 2007, 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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