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**FILED**<sup>4</sup>

MAY 15 2006

May 15, 2006

The Honorable Colleen M. Dale  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

Missouri Public  
Service Commission

Re: Case Nos. WC-2006-0082, et al.

Dear Judge Dale:

Please find enclosed for filing in the referenced matters an original and five copies of the following documents:

1. Respondent's Response to Complainants' Separate Requests for a "Certificated" Company to Provide Regulated Service on Big Island; and
2. Motion to Compel and Motion to Waive Requirements of 4 CSR 240-2.090(8).

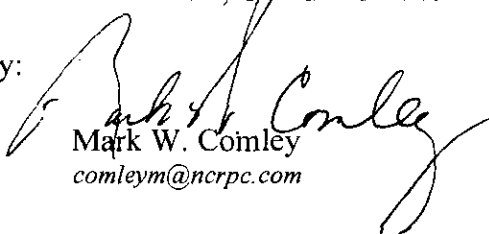
Would you please bring these filings to the attention of the appropriate Commission personnel.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:

  
Mark W. Comley  
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MWC:kjh  
Enclosures

The Honorable Colleen M. Dale  
May 15, 2006  
Page 2

cc: Office of Public Counsel  
General Counsel's Office  
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Judy Kenter  
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Charles E. McElyea  
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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Cathy J. Orler, et al.

Complainants,

v.

Folsom Ridge, LLC,

and

Big Island Homeowners  
Water and Sewer Association, Inc.,  
f/k/a Big Island Homeowners  
Association, Inc.

Respondents.

Case No. WC-2006-0082, et al.

**FILED<sup>4</sup>**

**MAY 15 2006**

**Missouri Public  
Service Commission**

**RESPONDENTS' RESPONSE TO COMPLAINANTS' SEPARATE REQUESTS  
FOR A "CERTIFICATED" COMPANY  
TO PROVIDE REGULATED SERVICE ON BIG ISLAND**

Come now Folsom Ridge LLC and Big Island Homeowners Water and Sewer Association, Inc., f/k/a Big Island Homeowners Association, Inc. and respectfully submit the following to the Commission:

1. On or about April 27 and 28, 2006, the complainants in this consolidated case filed separate requests (collectively "the Requests") that in effect were identical in the form of relief although the title of the pleadings filed may have differed. Essentially, or at least it appears to the Respondents that, each complainant will deem its complaint satisfied if a regulated company offers and provides water and sewer service to the residents of Big Island. They add the condition that the regulated company must be independent of respondents, their agents or representatives for a variety of reasons that Respondents vigorously contest.

2. In prehearing conferences in this case, respondents have notified each complainant, the staff and office of public counsel of their willingness to form an alternate entity which in turn will apply for certificates of service authority from this Commission to offer, supply and provide water and sewer service within a defined territory which would include Big Island. An engineering firm has already been retained in connection with the preparation of the necessary feasibility study.

3. Respondents submit that the Requests filed by the complainants justify the suspension of proceedings in these complaint cases upon the filing by respondents, or the alternate entity just mentioned, of an application for certificates of service to provide water and sewer service to the Big Island area. Once that application is filed, the complainants can intervene and in that proceeding voice the objections, if any, they may have to the qualifications of the applicant to supply and provide service. The complaints can remain in suspense until the application for the regulated entity runs its course and if approved, the complaints can be dismissed.

4. In further response to the Requests, Respondents, for themselves and their affiliates, deny that either is disqualified in any manner from lawfully managing, operating and maintaining a certificated water and sewer company under the rules, regulations and governing statutes of this Commission.

5. The condition sought by the complainants' Requests -- that the regulated company be independent of the respondents -- is beyond this Commission's jurisdiction and authority to satisfy. "It is obvious that the P.S.C. has no authority to take over the general management of any utility." *State ex rel. Laclede Gas Co. v. Public Service Commission* 600 S.W.2d 222, 228 (Mo.App. W.D. 1980).

The dominating purpose in the creation of the Public Service Commission was to promote the public welfare. To that end the statutes provided regulation which seeks to correct the abuse of any property right of a public utility, *not to direct its use*. [emphasis original]

*State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 181 (K.C. Ct. App. 1960). Although the Commission has broad powers,

[t]hose powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare.

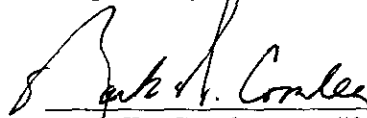
*Id.* at 182.

6. As the citations above confirm, the Commission has no authority to manage the business of the utilities it regulates, and has no authority to direct the respondents to divest their assets involuntarily to any other company, regulated or not. The Commission has no authority to broker asset transfer transactions or to coerce respondents in complaints to find and locate qualified companies to purchase and then place in regulated service water distribution or wastewater collection and treatment assets. The Commission has no statutory authority to impose these duties and furthermore, these steps all require the power to apply principles of law or equity which the Commission lacks. *See, State ex rel. GS Technologies Operating Co., Inc. v. Public Service Commission*, 116 S.W.3d 680, 696 (Mo.App. W.D., 2003)

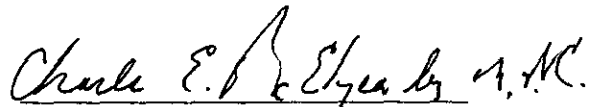
WHEREFORE, Respondents respectfully request that the procedural schedule in this case be suspended upon the filing by Respondents, or the alternate entity mentioned herein, of an application for certificates of service to provide water and sewer service to the Big Island area, that complainants be named as intervenors in that proceeding, and

proceeding, and that the complaint cases remain in suspense until the application process for the proposed regulated company reaches a conclusion.

Respectfully submitted,



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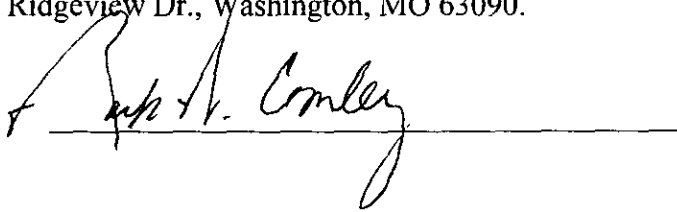
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and Big Island Homeowners Water  
and Sewer Association, Inc., f/k/a  
Big Island Homeowners Association,  
Inc.

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 15th day of May, 2006, 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); and via U.S. Mail, postage prepaid, to:

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A handwritten signature in cursive script, reading "Robert A. Comley", is written over a horizontal line.