

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

Cathy J. Orler,)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-2006-0082, et al.</u>
)	
Folsom Ridge, LLC,)	
)	
and)	
)	
Big Island Homeowners Association Water)	
and Sewer Association, Inc., f/k/a Big Island)	
Homeowners Association)	
)	
Respondents.)	
)	
In the Matter of the Application of Folsom)	
Ridge, LLC, and Big Island Homeowners)	
Water and Sewer Association, Inc., for an)	<u>Case No. WO-2007-0277</u>
Order Authorizing the Transfer and)	
Assignment of Certain Water and Sewer)	
Assets to Big Island Water Company and Big)	
Island Sewer Company, and in Connection)	
Therewith Certain Other Related Transactions)	

STAFF’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and respectfully provides the following Findings of Fact and Conclusions of Law for the Commission’s consideration:

FINDINGS OF FACT

1. Folsom Ridge, LLC (Folsom Ridge) is a developer on Big Island at the Lake of the Ozarks in Camden County, Missouri. Its members are Rick Rusaw and Reggie Golden.

2. Big Island Homeowners Water and Sewer Association f/k/a/ Big Island Homeowners Association, Inc. (BIHOA) is an association formed by the members of Folsom Ridge.

3. BIHOA allocates votes on a one-vote-per-lot basis. Folsom Ridge owns approximately 353 lots and consequently has approximately 353 votes in BIHOA.

4. Big Island Water Company and Big Island Sewer Company (the 393 companies) are not-for-profit companies formed pursuant to Sections 393.825 to 393.861 and 393.900 to 393.954 RSMo (2000).

5. As part of its development on Big Island, Folsom Ridge installed water and wastewater systems.

6. Folsom Ridge did not obtain certificates of convenience and necessity for these systems from the Missouri Public Service Commission (Commission).

7. Management and operational control of the systems was transferred to BIHOA. Folsom Ridge maintained title to the assets.

8. There are approximately 105 residents of Big Island. Any resident who takes water or wastewater service from BIHOA is considered to be a member of the association and is allowed to vote.

9. There are approximately 60 households connected to the wastewater service and approximately 49 households connected to the water service.

10. Existing homeowners who own property proximate to the systems were given an opportunity to purchase water and sewer taps that would enable them to connect to the centralized system.

11. Homeowners who paid for taps but have not connected to the systems have been billed availability fees by BIHOA.

12. Under the proposed by-laws of the 393 companies, those homeowners who have paid tap fees would have a right to connect to the systems anytime within ten years.

13. The initial installation of the water system was discovered to be improper.

14. Folsom Ridge contracted with Dave Kriebehl Engineering and construction manager James Crowder to reinstall the improperly installed portions of the water system correctly.

15. The plans and specifications used in the reinstallation project were approved by the Missouri Department of Natural Resources (MDNR).

16. The work was inspected as it progressed, and the only deviation from the approved plans and specifications came when the engineer and construction manager determined that flexible piping would be more appropriate to the terrain on a small part of the island than the PVC piping called for in the original plans. The change in piping was accompanied by a change order from the engineer.

17. There is no evidence that Folsom Ridge/BIHOA has any outstanding MDNR violations.

18. The systems as they are currently installed do not present greater than normal health and safety risks.

19. Eight individual complainants filed complaints against Folsom Ridge and Big Island Homeowners Association in August and September of 2005, alleging that Folsom Ridge, through BIHOA, was operating water and sewer utilities without certificates of convenience and necessity. Case No. WC-2006-0082 has been designated as the lead complaint case.

20. In the complaint cases, the complainants have requested that the Commission regulate Folsom Ridge/BIHOA and that a receiver be appointed to assume management, operation, and administrative control of the systems.

21. A local public hearing addressing water and sewer issues on Big Island was held on June 2, 2006.

22. Big Island Water and Sewer Company, Inc., a company affiliated with Folsom Ridge, filed an application for certificates of convenience and necessity with the Commission on June 16, 2006 (Case Nos. WA-2006-0480 and SA-2006-0482). The cases were consolidated under Case No. WA-2006-0480. The proceedings in the complaint cases were suspended pending the outcome of the certificate case.

23. On January 23, 2007, Folsom Ridge and Big Island Homeowners Water and Sewer Association filed a joint application seeking the Commission's approval for a transfer of the water and sewer assets to Big Island Water Company and Big Island Sewer Company (Case No. WO-2007-0277). Because of the proposed transfer of the water and sewer system assets to the 393 companies, the Commission granted the motion to dismiss Case No. WA-2006-0480. The Commission also ordered a joint procedural schedule for resolution of the complaint cases and Case No. WO-2007-0277.

24. The individual complainants and the 393 companies filed applications to intervene in Case No. WO-2007-0277. These applications were granted on February 7, 2007.

25. The cases were combined for hearing. The primary hearing was held from February 28, 2007 to March 2, 2007. Four individual complainants appeared at the primary hearing. All other parties were represented by counsel.

26. An ancillary hearing was held on March 30, 2007. Three individual complainants appeared at the ancillary hearing. All other parties were represented by counsel.

CONCLUSIONS OF LAW

1. Folsom Ridge and BIHOA meet the definition of a water corporation pursuant to Section 386.020(58) RSMo in that they own, operate, control, and manage a plant or property that sells or distributes water for gain.

2. Folsom Ridge and BIHOA meet the definition of a sewer corporation pursuant to Section 386.020(48) RSMo in that they own, operate, control, and manage a sewer system, plant or property with more than 25 outlets for the collection, carriage, treatment, or disposal of sewage within the state for gain.

3. Folsom Ridge and BIHOA are offering service to the public. *See, Osage Water Company v. Miller County Water Authority*, 950 S.W.2d 569 (Mo.App. S.D. 1997).

4. Because Folsom Ridge and BIHOA are a water corporation and a sewer corporation, they are a public utility subject to the jurisdiction of the Commission pursuant to Section 386.020(42) RSMo.

5. As a public utility subject to the jurisdiction of the Commission, Folsom Ridge and BIHOA are required to obtain the approval of the Commission prior to the transfer of assets to the 393 companies. Section 393.190.1 RSMo (2000).

6. “The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.” *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980) (citing *State ex rel. City of St. Louis v. Public Service Commission of Missouri*, 73 S.W.2d 393, 400 (Mo.banc 1934)). In this case, there has not been the requisite showing that the proposed transfer of assets

to the 393 companies is detrimental to the public interest. The Commission may not withhold its approval of the transfer.

7. No conditions will be imposed on the proposed transfer.

8. Appointment of a receiver pursuant to Section 393.145 RSMo (2000) (Supp. 2006) is inappropriate because Folsom Ridge/BIHOA is able to provide safe and adequate service and has not actually or effectively abandoned the utility.

9. The Commission will not have jurisdiction over the not-for-profit Big Island Sewer Company when the transfer becomes effective. Section 393.847.2 RSMo (2000).

10. Individual members of Big Island Sewer Company will not have personal liability for the debts of the company. Section 393.861 RSMo (2000).

11. The Commission will not have jurisdiction over the not-for-profit Big Island Water Company when the transfer becomes effective. Section 393.933 RSMo (2000).

12. Individual members of Big Island Water Company will not have personal liability for the debts of the company. Section 393.951 RSMo (2000).

IT IS ORDERED THAT

1. Folsom Ridge and/or BIHOA are public utilities subject to the Commission's jurisdiction.

2. The proposed transfer of assets from Folsom Ridge and BIHOA to Big Island Water Company and Big Island Sewer Company is approved.

3. Folsom Ridge and/or BIHOA and Big Island Water Company and Big Island Sewer Company are authorized to take any and all lawful actions necessary to carry out the proposed transfer.

4. Folsom Ridge shall file a status report no later than June 30, 2007, and continuing every 90 days thereafter until it has informed the Commission that all transactions necessary to effectuate the transfer have been completed.

5. After all transactions have been completed, the Commission will relieve Folsom Ridge and/or BIHOA from its responsibility to provide water and sewer service to the public.

6. The Commission does not waive its right to seek penalties pursuant to Sections 393.170 and 386.570 for operating a water corporation and a sewer corporation without the required certificates of convenience and necessity.

7. Complainants' request for the appointment of a receiver is denied.

WHEREFORE Staff respectfully submits the above proposed findings of fact and conclusions of law.

Respectfully submitted,

/s/ Jennifer Heintz

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all parties and counsel of record this 27th day of April 2007.

/s/ Jennifer Heintz