

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 24th day of
October, 2006.

In the Matter of the Application of Big Island)	
Water & Sewer Company for a Certificate of)	
Convenience and Necessity Authorizing It to)	
Construct, Install, Own, Operate, Control, Manage)	<u>Case No. WA-2006-0480, et al.</u>
and Maintain a Water and Sewer System for the)	
Public Located in an Unincorporated Area in)	
Camden County, Missouri)	

**ORDER DENYING REQUEST TO ATTACH A LIEN OR FREEZE UTILITY
ASSETS TO HALT AND PREVENT TRANSFER**

Issue Date: October 24, 2006

Effective Date: October 24, 2006

Big Island Water & Sewer Company, Inc., has filed an application seeking a certificate of convenience and necessity to operate a water and sewer system in a portion of Camden County, Missouri. That application is set for hearing in February 2007. On October 5, 2006, five individual intervenors¹ filed a motion asking the Commission to:

Attach a lien and/or freeze the Big Island utility assets to halt and prevent the transfer of said assets, until such time as:

1. Ownership of utility assets can be determined
2. Assets of the utility can be determined
3. Federal Court Case No. 06-4044-CV-C-WAK, involving and specifically naming the water and sewer lines on Big Island is disposed; or proof provided that no encumbrances exist with respect to the utility and/or its assets
4. A Formal Finding of Fact in a determination and ruling by the Commission in Case No. WC-2006-0082, et al. and Case No. WA-2006-0480, et al. involving said utility assets can be made

¹ The five named intervenors are Joseph J. Schrader, Cindy Fortney, Jerry Steinhour, Cathy J. Orler, and Benjamin D. Pugh.

Big Island Water & Sewer filed a response to that motion on October 12. No other party has responded.

As an administrative body created by statute, the Public Service Commission has only such powers as have been given it by the legislature.² The Commission is not a court and does not have the power to attach liens to utility property or to issue an injunction to freeze utility assets. However, Section 393.190, RSMo 2000, requires a public utility to obtain the Commission's approval before conveying away any assets that are "necessary or useful" in its provision of service to the public. That statute also provides that any such sale of assets that occurs without the approval of the Commission is void. Assuming that Big Island Water & Sewer, which at this point has not been granted a certificate, is a public utility, it cannot transfer away its necessary or useful assets without the approval of the Commission. That prohibition is already in place by operation of the statute, without any order from this Commission.

The intervenors' motion does not indicate what assets of Big Island are to be transferred. It does not indicate to whom those assets are to be transferred. Nor does it establish any reason why an order from this Commission is necessary. The intervenors' motion simply does not establish a basis upon which the Commission can grant the relief the intervenors seek. For that reason, the intervenors' motion must be denied.

IT IS ORDERED THAT:

1. The Intervenors' Request to the Commission to Attach a Lien and/or Freeze Utility Assets to Halt and Prevent Transfer is denied.

² State ex rel. Util. Consumers Council of Mo, Inc. v. Pub. Serv. Comm'n, 585 S.W. 2d 41 (Mo. banc 1979).

2. This order shall become effective on October 24, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Woodruff, Deputy Chief Regulatory Law Judge