

September 25, 2006

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

FILED²
SEP 26 2006
Missouri Public
Service Commission

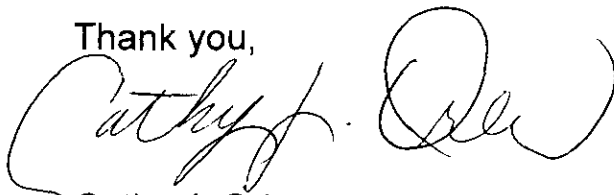
Re: Case Nos. WA-2006-0480

The Honorable Judge Dale:

Please find enclosed, for filing, "Intervenor's Disclosure to the Commission." Five additional copies are also enclosed for the appropriate Commission personnel; if you would be so kind as to bring this filing to their attention.

Please contact me, if you should have any questions regarding these filings.

Thank you,



Cathy J. Orlor
3252 Big Island Drive
Roach, MO. 65787
(573)317-1490

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE
OF MISSOURI

FILED²

SEP 26 2006

In the Matter of the Application of)
Big Island Water & Sewer)
Company, Inc. for a Certificate)
of Convenience and Necessity)
authorizing it to construct, own,)
operate, control, manage, and)
maintain a water and sewer)
system for the public located)
in an unincorporated area in)
Camden County, Missouri)

Missouri Public
Service Commission

Case No. WA-2006-0480, et al.

INTERVENOR'S DISCLOSURE TO THE COMMISSION

Comes now, Cathy Orler, on her own behalf, to disclose to the Commission, the following:

1. On August 18, 2005, Cathy Orler filed a Formal Complaint with the Missouri Public Service Commission, against Folsom Ridge, LLC., Owning and Controlling the Big Island Homeowners' Association.

The basis of Ms. Orler's complaint, was that the BIHOA, was not operating as an HOA, but rather an unlicensed public utility, by servicing and billing individuals who were/are not members of the association, and therefore should be subject to regulation by the PSC.

This situation was created when the developer, Folsom Ridge, LLC., actively solicited existing residents in the Big Island community, to purchase water and sewer taps as a means to fund and cash flow the developer's construction and installation

of a central water and sewer utility. The contractual agreements resulting from the sales and purchases of the water and sewer taps between Folsom Ridge, LLC., and existing residents, guaranteed the purchasers a reserved right to connect to the future utility at a time of their choosing; with no fees and/or additional charges associated with connecting to the system, until such time as the individuals became a customer, by connecting to the system, to receive service, and then, being billed/charged for the service(s) received.

The BIHOA, had not yet been created as an active organization, to oversee, operate, and maintain the water and sewer utility, at the time of the contractual agreements. Instead, the utility became operational and began providing service to individuals. The BIHOA, was not organized until approximately 16 months after the utility had actively been providing service to residential users. Therefore, as per the previous contractual agreements made to the existing residents, there was no membership affiliation requirement, as a condition to receive utility service.

Furthermore, in the complaint, Ms. Orler provided documentation to support her claim that the HOA was/is being controlled by the developer, Folsom Ridge, LLC., through a vote that is governed and dictated by the number of property lots owned. Additional documentation to further prove this fact, is provided as Exhibit 1, in this document. Mr. Charles E. McElyea, attorney for Folsom Ridge, LLC., Big Island Water and Sewer Association, Inc., (f.k.a. Big Island Homeowners' Association), and Big Island Water and Sewer Company, Inc., states in his letter to Big Island resident, Mr. Jim Schrader, that 77 lots were represented at the July 2002 HOA meeting.

2. Subsequently, in August and September of 2005, a total of 9, (nine), separate Formal Complaints against Folsom Ridge, LLC., Owning and Controlling the BIHOA, were filed with the Commission. While each complaint was somewhat different, all alleged that F.R. and BIHOA, or some combination of the two, was operating a water and sewer utility that should be subject to regulation by the Commission. These 9, (nine), complaints

were then consolidated into Case No. WC-2006-0082, et al., which remains active within the jurisdiction of the Missouri Public Service Commission. No formal finding of fact in a determination and ruling by the Commission, has been made in this case.

3. The principles of Folsom Ridge, LLC., have now, as a response to those complaints, created another new legal entity, named Big Island Water and Sewer Company, Inc., for the purpose of applying for, and acquiring the necessary regulatory approval from the PSC, to continue providing water and sewer service on Big Island. A part of this application, is the "Agreement For Sale And Transfer Of Water Distribution System and Wastewater System," assets. This application for a Certificate of Convenience and Necessity was filed with the Commission, on June 16, 2006, and created Case No. WA- 2006-0480, et al. Pleadings filed in this case by former Complainants and Intervenors, have raised the issue to the Commission, and questioned the ownership of the said assets of the utility, with respect to the ability to sell, transfer, and/or deed such said assets. Case No. WA-2006-0480, et al. remains active within the jurisdiction of the Missouri Public Service Commission. The application in this case has not been approved, or a certificate granted; however, an "Order Adopting Procedural Schedule And Scheduling A Prehearing Conference," was issued by the Commission on September, 07, 2006.
4. On September 20, 2006, a prehearing conference in Case No. WA-2006-0480, et al. was held. During this prehearing conference, many and various issues relating to both the complaint case, (Case No. WC-2006-0082, et al.), and the application case, Case No. WA-2006-0480, et al.), were discussed – including specifically, the "Application," the "Feasibility Study," and the "Agreement For Sale and Transfer Of Water Distribution System And Wastewater System," assets, related to Case No. WA-2006-0480. There was no disclosure made by any party during this open forum, regarding any proposals, negotiations, conversations, discussions, and/or

meetings whereby the developer, Folsom Ridge, LLC., (Respondent in Case No. WC-2006-0082, et al. and it's principles being the same as Big Island Water and Sewer Company, Inc., Applicant in Case No. WA-2006-0480, et al.), "is open to the following proposal," by Pam Holstead. (Exhibit #2).

It would seem, in my opinion, that the developer, Folsom Ridge, LLC., (with its principles being the same as the BIHOA and the Big Island Water and Sewer Company, Inc.), had to have prior knowledge of this proposal to allow them to be "open to the proposal." However, there have been no formal filings with the Commission regarding this proposal, and the "deeding of the water and sewer system to a customer owned and operated, not for profit Company established under Missouri statute 393" – although, it involves the Big Island utility assets that are already subject to sale and transfer within the jurisdiction of the PSC, Folsom Ridge, LLC., (Rick Rusaw and Reggie Golden), and applicant, Big Island Water and Sewer Company, Inc., (Rick Rusaw and Reggie Golden), BIHOA, (being Owned and Controlled by Folsom Ridge, LLC. – Rick Rusaw and Reggie Golden), Complainants and Intervenors who are present and future utility customers, and the Commission, who currently has jurisdiction over all these matters. Although Ms. Holstead has volunteered to serve as legal liaison for the residents of Big Island, in a self appointed position, with regard to water and sewer issues (Exhibit # 3), in my opinion, it would appear that Ms. Holstead is not familiar with all of the issues of the cases before the Commission, in presenting a "proposed solution" to other residents. However, Ms. Holstead did, have the same opportunity as other residents, to become an active participant in the water and sewer issues on Big Island, by filing a Formal Complaint with the Commission, and/or becoming an intervenor in the application case. Therefore, the water and sewer issues, as outlined in my Formal Complaint, and my pleadings filed with the Commission as a Complainant and Intervenor, are restated with respect to the "proposed solution," of the developer and Ms. Holstead, in the following:

- a. Item # 2, of the developer's and Ms. Holstead's "proposed solution," - is attempting once again, to impose a required

membership to those current and future utility customers, with a prior contractual agreement in which monies were exchanged, to receive utility service, with no membership requirement, as a condition to receive said service.

(Reference Membership –meetings, annual, special – quorum – voting. 393.839. 1. and 393.921.1 (Exhibit # 4).

- b. Item # 4, of the developer's and Ms. Holstead's "proposed solution," - requires that directors of the board, be customers of both the water and sewer system. In theory, this requirement would appear to have merit, and if instituted in a "new" development area, where all utility members were equal utility customers, this claim would be fundamental. However, in practical application of the Big Island community and its current situation, which consists of many existing residents with their own private wells and septic systems, (most of which are not currently receiving both water and sewer utility service), instituting such a policy would be discriminatory among the individual member customers. Membership would be a required condition to receive utility service; yet all members would not be equal in their participation allowed as a member. This is discrimination.
 - c. Item # 5, of the developer's and Ms. Holstead's "proposed solution," - further discriminates among customers, by disallowing certain individuals to serve on the board; although as a customer your membership again, is mandatory, and an imposed requirement to be able to receive utility service. This discrimination then results in a board of directors and its "allowable" individuals to "control" the utility, without all members being of equal status to maintain a board position.
5. With the "proposed solution" of the developer and Ms. Holstead, the issues of the water and sewer utility on Big Island, would remain unchanged. The "proposed solution" to the issues of the water and sewer utility, by the developer and

Ms. Holstead, changes nothing; except confirm the need for a regulated public utility - operated, maintained, and managed by a certificated company independent of any associations with Folsom Ridge, LLC. or any of its agents or representatives.

- a. Membership in an organization is still being imposed on individuals as a conditional requirement to receive utility service, when previous contractual agreements guaranteed these individuals the right to receive utility service, without this requirement.
- b. Individuals are being discriminated against, within the utility organization, although their membership in this association, is being required and/or imposed.
- c. The utility is being controlled by individuals as a result of a discrimination process; similar to the current situation that exists with the voting of lots.

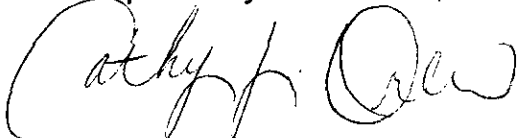
This pleading is being submitted as a full disclosure of information to the Commission, as this information is subject to the jurisdiction of the Commission in the cases involving it.

Wherefore, the relief requested from the Commission remains the same:

- 1. Reject the "Application" of Big Island Water and Sewer Company, Inc. and deny certification of the same
- 2. Regulate this utility
- 3. Appoint an independent company, (with no association or affiliation with Folsom Ridge, LLC. and its principles), as an interim receiver until:
 - a. the development project on Big Island by Folsom Ridge, LLC. and its principles is complete

- a. civil court issues involving Folsom Ridge, LLC. and its principles and the principles of the Big Island Water and Sewer Company, Inc. and the utility on Big Island are resolved
- b. Federal Court Case No. 06-4044-CV-C-WAK, involving Folsom Ridge, LLC. and its principles and the principles of the Big Island Water and Sewer Company, Inc. and the water and sewer lines on the East side of Big Island is disposed

Respectfully submitted,



Cathy Orler

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via U.S. Mail, on this 12th day of September, postage prepaid to: the General Counsel's Office, and the Office of Public Counsel; and to Mark W. Comley, 601 Monroe Street, Suite 301, P.O. Box 537, Jefferson City, MO. 65102, and Charles E. McElyea, 85 Court Circle, P.O. Box 559, Camdenton, Mo. 65020

Copies of this document were sent vial E-mail to :

Cindy Fortney, 3298 Big Island Drive, Roach, MO. 65787
Benjamin D. Pugh, 1780 Big Island Drive, Roach. MO. 65787
Joseph J. Schrader, 1105 Yorktown Pl., DeLand, FL. 32720
Stan Temares, 1836 Big Island Drive, Roach, MO. 65787
Ben F. Weir, 3515 SW Meyer Blvd., Blue Springs, MO. 64015
Elaine H. and William T. Foley, II, 15360 Kansas Ave., Bonner Springs, KS. 66012
Mark and Deborah Hesley, 2308 Big Island Dr., Roach, MO. 65787
Don Deckard, 2218 Big Island Dr., Roach, MO. 65787
Bernard J. Beaven, 13900 E. 217, Peculiar, MO. 64078
Jerry Steinhour, Lot 57, P.O. Box 737, Seneca, Ill. 61360
Joseph Geary Mahr, 1886 Big Island Dr., Roach, MO. 65787
Arthur W. Nelson, 6504 Melody Lane, Parkville, MO. 64152
Eugene Prather, 1604 Big Island Dr., Roach, MO. 65787
Donald J. and Frances K. Weast, 5291 Kerth Rd., Mehlville, MO. 63128
Stephen D. Kleppe, 8210 E. Tether Trail, Scottsdale, AZ. 85255

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CHARLES E. McELYEA
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DAVID T. WELCH
DEIRDRE O'DONNELL
MICHAEL A. CARTER

HUGH PHILLIPS (1911-1997)

LEGAL ASSISTANTS: Sharon Piskorski
Dana Stouffer

September 19, 2003

Mr. James Schrader
2140 Big Island Drive
Roach, MO 65787

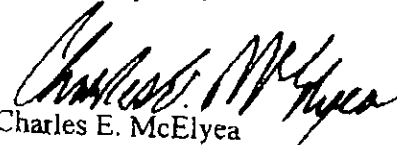
RE: Big Island

Dear Mr. Schrader:

Your letter of August 21, 2003 inquired as to how many lot owners were represented at the July 2002 meeting. I have been advised that there were 77 lots represented at the meeting. The total votes then would have been 77 which was more than half of the total lots.

If you have any further questions, do not hesitate to contact me.

Very truly yours,


Charles E. McElyea

CEM:sp

Exhibit 1

Exhibit 2

page 1

**Pamela Holstead
3458 Big Island Drive
Roach, MO 65787**

September 19, 2006

(573) 317 - 1198

Dear Neighbor:

Your input is needed on a possible solution to the pending litigation concerning the Big Island community water and sewer plants. The developer is open to the following proposal - how about you? The first in a series of deadlines aimed at PSC regulation is Sept. 20 - so your immediate response is needed and will most likely be shared with the Mo. Public Service Commission. No need to move forward if the majority are against this proposal.

In general, the proposed solution would include the following::

1. Folsom Ridge would deed the Water System to a customer owned and operated, not for profit, Water Company established under Missouri Statute 393. The sewer system would be deeded to a separate 393 Sewer Company (separate corporations are required by law). By law, neither 393 company would be subject to PSC regulation or fees.

2. Every person who is connected to water service would (by law) become a Member (Customer) of the water company and would have one vote at water company Meetings. Every person who is connected to sewer service would (by law) become a Member (Customer) of the sewer company and would have one vote at sewer Company meetings.

3. All Members would be bound by the rules and regulations of the State of Missouri, DNR, as well as rules adopted by the Water and Sewer Boards.

4. There would be 5 people on the Board of Directors of each corporation. These 5 directors would be customers of BOTH the Water system AND the Sewer system. The 5 directors of the Water Board would also serve as the 5 directors of the Sewer Board. No more than one person per residence could serve as a Director.

5. No officer or employee of Folsom Ridge would serve on the first Board of Directors. Likewise, no customer who has filed litigation (complaints) against the developer would serve on the first Board of Directors.

6. The new 393 corporations would adopt rules and by-laws, which (among other things) make it clear: a place will be reserved in the current water and sewer systems for all Big Island residents who have purchased taps for the purpose of connecting to water

Exhibit 2 page 2

or sewer service at a later date. When individuals with taps decide to connect to the system, they will be expected to pay for the actual cost of connecting their residence to their taps which are already in place.

7. No one will be required to connect to the community Water System unless they elect to do so. No one will be forced to connect to the community Sewer System unless they elect to do so, or are required to do so by state laws or regulations pertaining to sewer systems.

8. No monthly or quarterly fees will be charged to any one who is not an actual CUSTOMER of the system and by Customer we mean someone who is actually utilizing the water or sewer services.

9. If a current Big Island property owner (who has NOT already purchased a tap for water, sewer, or both) should decide to connect to one or both utilities in the future, that property owner would be expected to pay a one-time tap fee in an amount not less than the amount other property owners have paid for their tap fees in the past. This fee would include the installation of the necessary roadside taps for connecting to the desired utility system.

10. Any community Water System Customer who has an outdoor irrigation system, indoor fire sprinkler system, private well, or other water system which has the potential for backing up into the community water system, will be required by rules and regulations to install the appropriate backflow preventer or be disconnected from the water system.

11. Water service will not be denied to anyone in the Big Island Service area who wants service, and acts in accord with rules and regulations established by the new Water Company. Sewer service will not be denied to any one in the Big Island service area who wants service, as long as space is available, and the applicant acts in accord with rules and regulations established by the Sewer Company.

12. Provisions will be written into the Company rules and regulations which will insure water and sewer service for any development project located on Big Island. If expansion of water and/or sewer facilities becomes necessary to accommodate new development, the new construction & expansion will be done at the expense of the developer. The water and sewer Companies will require written agreements with all Big Island developers regarding the construction of utility lines, as well as warranties regarding any defects in said lines, should that become an issue.

13. An outside manager will be hired to handle the day to day operation of the water and sewer systems, including the task of billing. Mr. McDuffy is currently performing that service and will continue in that capacity (at least initially) to insure a smooth transition.

Exhibit 2 page 3

A lot of legal work needs to be done to make the above proposal a reality and it needs to start immediately. However, I don't want to start this ball rolling until I know what my neighbors think.

Please complete this page and mail or fax it to me as soon as possible. You can also email me with the requested information if you prefer.

Pamela Holstead : 3458 Big Island Dr., Roach, MO 65787

FAX: (573) 317 - 1542

E-Mail: [pamersbmo @ yahoo.com](mailto:pamersbmo@yahoo.com)

*Thanks,
Pam*

My Name Is: _____
(Please Print)

I own property on Big Island, Camden County, Missouri. The checked statements below are most applicable to me:

_____ **I am a connected customer to BOTH the central Water and Sewer systems located on Big Island.**

_____ **I am a connected customer to the central Sewer System Only.**

_____ **I am a connected customer to the central Water System Only**

_____ **I am currently not connected to EITHER the water or sewer**

_____ **YES, I would like to see the Central Water and Sewer Systems deeded over to 393 corporations which include the provisions outlined by Mrs. Holstead in her letter to me dated September 19, 2006.**

_____ **NO, I do not want the Central Water and Sewer Systems . Deeded over to 393 corporations and would prefer PSC regulation.**

Comments: _____

Exhibit 3

Cathy J. Orler

From: "Phil and Tonie Hiley" <tphiley@yahoo.com>
To: "Phil and Tonie Hiley" <tphiley@yahoo.com>
Cc: "Rick and Diane Rusaw" <rrusaw@aol.com>; "Rick Rusaw" <rrusaw@lbcc.org>; "Reggie Golden" <reggieg@diamondgillp.com>; "Robert Pohl" <rup@hbc-law.com>
Sent: Monday, September 26, 2005 7:55 PM
Subject: Letter From Pam Holstead

Pamela Holstead, Attorney

3458 Big Island Drive

Roach, MO 65787

Dear Big Island Residents:

I'm one of your neighbors and I'm also an attorney. Our home utilizes the community water and sewer system. Our vacant lot has a tap for these services, but is not connected.

I am volunteering to serve as legal liaison for the residents of Big Island with regard to water and sewer issues. If I receive word of an uprising to impeach me, I will be happy to resign. Phil & Tonie Hiley have capably served as liaison in the past regarding planning and zoning issues and I believe it is time to pass the baton. The Hileys agree. However, they will utilize their computer contact list to help forward information.

Exhibit 4

Effective 12-23-97

Membership--meetings, annual, special--quorum--voting.

393.839. 1. No person shall become a member of a nonprofit sewer company unless such person shall agree to use services furnished by the company when such shall be available through its facilities. The bylaws of a company may provide that any person, including an incorporator, shall cease to be a member thereof if such person shall fail or refuse to use services made available by the company or if services shall not be made available to such person by the company within a specified time after such person shall have become a member thereof. Membership in the company shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect of membership.

393.921. 1. No person shall become a member of a nonprofit water company unless such person shall agree to use services furnished by the company when such shall be available through its facilities. The bylaws of a company may provide that any person, including an incorporator, shall cease to be a member of such company if such person shall fail or refuse to use services made available by the company or if services shall not be made available to such person by the company within a specified time after such person shall have become a member of such company. Membership in the company shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations with respect to membership.