

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

January 24, 2007  
Jefferson City, Missouri  
Volume 4

Cathy J. Orlor, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. WC-2006-0082  
 ) et al.  
Folsom Ridge, LLC, Owning and )  
Controlling the Big Island )  
Homeowners Association, )  
 )  
Respondent. )

MORRIS L. WOODRUFF, Presiding  
DEPUTY CHIEF REGULATORY LAW JUDGE

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1                                   A P P E A R A N C E S

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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: All right. Let's go ahead and  
3 go on the record. I want to welcome everyone this  
4 morning. This is a prehearing conference in  
5 Case No. WC-2006-0082, which is a number of complaints  
6 against Folsom Ridge, LLC, and the Big Island Homeowners  
7 Association, however that's called now.

8 We'll begin today by taking entries of  
9 appearance beginning with Folsom Ridge.

10 MR. COMLEY: Thank you, Judge Woodruff. Let the  
11 record reflect the entry of Mark W. Comley, Newman, Comley  
12 & Ruth, 601 Monroe Street, Suite 301, Jefferson City,  
13 Missouri, 6502, and, also, the entry of Charles E.  
14 McElyea, Phillips, McElyea, Carpenter & Welch, PC, 85  
15 Court Circle, P.O. Box 559, Camdenton, Missouri, 65020, on  
16 behalf of Folsom Ridge, LLC, and Big Island Homeowners  
17 Water & Sewer Association, Inc., the Respondents in the  
18 case.

19 JUDGE WOODRUFF: Thank you. For Staff?

20 MR. THOMPSON: Kevin Thomson for the Staff of  
21 the Missouri Public Service Commission, Post Office Box  
22 360, Jefferson City, Missouri, 65102.

23 JUDGE WOODRUFF: And for the Office of Public  
24 Counsel?

25 MR. MILLS: For Office of Public Counsel, my

1 name is Lewis Mills. My address is Post Office Box 2230,  
2 Jefferson City, Missouri, 65102.

3 JUDGE WOODRUFF: All right. And there are a  
4 number of complainants in this case, so I'll just go down  
5 the list. Cathy Orlor?

6 MS. ORLER: Present.

7 JUDGE WOODRUFF: Ben Wehr?

8 MS. ORLER: Yeah. He was removed.

9 JUDGE WOODRUFF: He was actually dismissed from  
10 the 480 case.

11 MS. ORLER: Oh, okay.

12 JUDGE WOODRUFF: Did you know if he wants to be  
13 dismissed from this case as well?

14 MS. ORLER: Well, he's out of -- he's residing  
15 in a different state now, so --

16 JUDGE WOODRUFF: Oh, he is? Okay. Cindy  
17 Fortney?

18 MS. FORTNEY: Yes.

19 JUDGE WOODRUFF: Dean Fortney?

20 MS. FORTNEY: No. He's not here.

21 JUDGE WOODRUFF: Ben Pugh?

22 MR. PUGH: Yes.

23 JUDGE WOODRUFF: Judy Kenter? Stan Tamaris?

24 I don't see him. And Joseph Schroeder? Okay. Did I miss  
25 anyone?

1           MR. PUGH: Mr. Tamaris is in poor condition or  
2 he might have been here.

3           JUDGE WOODRUFF: I'm sorry to hear that. Okay.

4           MS. FORTNEY: I'd asked him before if it was  
5 like on hold or anything if I could represent him, and it  
6 was kind of like on hold.

7           JUDGE WOODRUFF: Is he still in poor health  
8 or --

9           MS. FORTNEY: And he lives out of state. He  
10 lives in Kansas and --

11          JUDGE WOODRUFF: All right. Well, I'm not going  
12 to deal with that today, but -- all right. That was my  
13 recollection on the situation, also.

14          All right. Well, I believe that's all the  
15 parties. And the reason I brought you all here today is  
16 just to discuss how we want to proceed in this case.

17          As you're all aware, of course, there's a --  
18 another case pending, WA-2006-0480, which concerns Big  
19 Island Water & Sewer Company's application to -- for a  
20 certificate from the Commission.

21          And when that application was filed back in  
22 June, I -- the Commission issued an order setting this --  
23 this complaint aside for a moment while we -- we dealt  
24 with that.

25          In the last several months, there have been some

1 developments in the 480 case with suggestions and the  
2 possibility that that case would wind up being dismissed,  
3 and this case would still be out there pending.

4 And there was a -- a request from some of the  
5 complainants to reactivate this case to deal with that  
6 situation. And, basically, that's what I've done.

7 So I'm looking for guidance from you all as to  
8 how we want to proceed in this case and whether this can  
9 actually wait until after the 480 case is resolved.

10 Another possibility would be to combine the two,  
11 possibly going ahead and hearing it on -- I believe the  
12 480 case starts the hearing on February 5th, which is  
13 coming up fairly quickly.

14 If the parties agree, as an alternative, we  
15 could combine the cases and come up with a new hearing  
16 date for the combined cases as well.

17 So I'm going to -- I guess I'll start with  
18 Mr. Comley. What would -- what would the companies like  
19 to see in this case?

20 MR. COMLEY: Well, there's a variety of twists  
21 and turns in this case, Judge, and I'm going to give you  
22 another one.

23 JUDGE WOODRUFF: Okay.

24 MR. COMLEY: Last evening, somewhat in -- in  
25 response to the January 11th Order that the Commission

1 entered in this case, Folsom Ridge and the Association  
2 filed a contingent application before the Commission for  
3 approval to transfer the assets that provide water and  
4 sewer service on Big Island to Section 393 non-profit  
5 companies organized by local residents on the island.

6 Those companies have been referred to in the 480  
7 case several times and were referred to by the  
8 complainants in this case in their most recent motion to  
9 lift the stay.

10 The Commission's Order indicated that there may  
11 be a consideration of probable jurisdiction. Our point is  
12 that we don't believe the Commission has jurisdiction.  
13 But we think the issue is important enough to be taken  
14 care of that we will ask the Commission first to decide if  
15 it has jurisdiction.

16 And if it does not determine that issue in favor  
17 of dismissal of the application, then we would ask for a  
18 prompt review and approval of the asset transfer.

19 As a consequence of that application, the  
20 Applicant in 480 is no longer interested in acquiring a  
21 certificate. Today, the Applicant intends to file a  
22 Motion to Dismiss the application case.

23 Knowing that may change the scope of what we're  
24 doing here today. I thought it important to mention that  
25 to you.

1 JUDGE WOODRUFF: I appreciate that.

2 MR. COMLEY: Also, I did take the step of  
3 inviting the officers and members of the Board of  
4 Directors of the Section 393 companies that are involved  
5 in this asset transfer. And they are represented here  
6 today and -- with us.

7 JUDGE WOODRUFF: Represented by counsel or  
8 they're here?

9 MR. COMLEY: They're here.

10 JUDGE WOODRUFF: Okay.

11 MR. COMLEY: And -- and thinking that that may  
12 be a -- a good point for all of us to visit with either --  
13 probably off the record about a way of handling the  
14 situation down there.

15 I'll represent to you, and this is quite  
16 insincere, the reason that was filed is because I think  
17 like you, the Commission, the -- the Respondents in this  
18 case are very anxious to try to find a way of solving the  
19 dispute down there and coming up with a way in which these  
20 disputes can be ended.

21 The Staff, early on in this complaint, gave the  
22 Respondents two alternatives, one of which was a  
23 certificated company, and the other was use of the  
24 non-for-profit alternative in Chapter 393 as a means of  
25 doing this.



1           During the course of the certificate case, local  
2 residents did organize, came to the Respondents with a  
3 proposal, and that -- that proposal is one that we are  
4 advocating the Commission approve in the new case.

5           I don't have the case number with me. And  
6 forgive me. I did not send you a copy of the application,  
7 and I -- I neglected to do that. I should do that. But I  
8 will do that when I get back to the office.

9           JUDGE WOODRUFF: As it -- okay. So it was  
10 actually filed in EFIS yesterday?

11          MR. COMLEY: Yes.

12          JUDGE WOODRUFF: Probably hasn't been assigned  
13 to a judge yet, then.

14          MR. COMLEY: Probably not.

15          JUDGE WOODRUFF: Okay. Anything else,  
16 Mr. Comley?

17          MR. COMLEY: I think that's it.

18          JUDGE WOODRUFF: Okay. Mr. Thompson, what's  
19 Staff's position?

20          MR. THOMPSON: Well, I think Staff would like to  
21 see the management, the operation and the systems placed  
22 into the hands of an entity legally authorized and  
23 practically competent to carry that out.

24                 If that's going to be a certificated entity,  
25 that's fine with us. If it's going to be a 393, that's

1 fine with us, too.

2           It would be our position -- I think we believe  
3 that the Commission should find jurisdiction and should go  
4 ahead and approve the transfer of assets to the  
5 not-for-profits. We believe that the Commission may want  
6 to inquire into the circumstances to determine whether any  
7 conditions on the transfer will be necessary.

8           JUDGE WOODRUFF: All right. Mr. Mills, what's  
9 Public Counsel's view?

10           MR. MILLS: Well, it's really not all that  
11 different from -- from Mr. Thompson's, but it is a little  
12 different.

13           I don't believe that the Commission should  
14 necessarily -- first, I believe the Commission should take  
15 jurisdiction because I do believe that Folsom Ridge and  
16 the Big Island Homeowners Association do qualify as a  
17 utility that ought to be certified by the Commission, and  
18 I don't believe that they can transfer assets without  
19 Commission approval.

20           So I think the Commission does need to take  
21 jurisdiction and approve or not approve that transfer.  
22 And I -- I don't know enough about the -- the recently  
23 formed 393 not-for-profit corporations to know whether or  
24 not those are legitimate entities, whether or not the  
25 Commission should approve a transfer to them or not.

1           I think that's -- if there's an application  
2 pending, that's -- that's obviously the case in which to  
3 examine that question. And just sort of a minor point, I  
4 believe Mr. Comley said that he planned -- his clients  
5 plan to dismiss the 480 case today.

6           I believe because of the procedural posture of  
7 that case, the -- the Applicant doesn't have the right to  
8 simply dismiss it. They can ask for Commission approval  
9 to dismiss, but I don't think they can dismiss without the  
10 Commission.

11           JUDGE WOODRUFF: I believe that is correct since  
12 testimony has been filed.

13           MR. MILLS: Of course, you know, if the -- if  
14 the Applicant doesn't want to and isn't going to move  
15 forward with the case, there's little the Commission can  
16 do to force that case to go anywhere. So I don't know  
17 that there's any reason not to allow it to be dismissed.

18           But, you know, this is -- this is a very  
19 complicated situation. It's kind of a -- as Mr. Comley  
20 said, every time you draw a bead on something, that thing  
21 disappears, and there's a new target to shoot at.

22           I guess our current target is the -- the 393  
23 not-for-profit corporations. That's a workable solution  
24 in many cases. Whether it is here or not remains to be  
25 seen.

1                   In terms of procedurally, I mean, I guess we'll  
2 -- we'll hear from the -- the 393 folks today and hear  
3 from the Folsom Ridge folks, and we'll hear from the  
4 Complainants and see if there's any avenue worth pursuing.

5                   JUDGE WOODRUFF: All right. Thank you. Ms.  
6 Orler?

7                   MS. ORLER: I agree with both Mr. Thompson and  
8 Mr. Mills. And, obviously, we're all coming from  
9 different viewpoints on -- on agreements and  
10 disagreements.

11                  I think, first of all, there is a lot of  
12 question regarding the 393s and their capabilities. And a  
13 lot of information that has not been provided to all of  
14 the residents of Big Island, not just the Complainants or  
15 Intervenors in this case.

16                  For example, to my knowledge, the -- the by-laws  
17 governing the 393, we have requested numerous times copies  
18 of those documents. Those have not been provided.

19                  I think for every resident on Big Island,  
20 regardless of them being a Complainant or Intervenor in  
21 this case, those documents governing the 393 are very  
22 important, and every resident should be informed by having  
23 the opportunity to read not only those documents but the  
24 operating agreements that the 393 has proposed between the  
25 developer, Folsom Ridge, and the 393s themselves.

1           So I think Mr. Mills has brought up a very good  
2 question with regards to the capabilities and the  
3 legitimacy of the 393s as they exist.

4           I agree with Mr. Mills in my understanding of  
5 the reading of the statutes with regards to the dismissal  
6 of the 480 case. I think an application -- it's my  
7 understanding an application needs to be applied and  
8 approved for that.

9           I agree with what Mr. Mills said with regard to  
10 the jurisdiction of the Commission, with regards to the  
11 complaint case and Folsom Ridge's control over the present  
12 association. I think jurisdiction needs to be found  
13 within the Public Service Commission regarding that case,  
14 which was the request of the complaint cases for relief,  
15 which was a regulated utility.

16           Now, having said that, in the numerous pleadings  
17 that have been filed, there are several issues that will  
18 remain unchanged if the assets are transferred from an  
19 unregulated entity to another unregulated entity.

20           Mr. Comley, in one of his pleadings, filed that  
21 the Commission lacks jurisdiction over the 393s. I  
22 understand that and agree with that. I know that the  
23 jurisdiction of the 393s are within the DNR's  
24 jurisdiction. Those are the very reasons that the formal  
25 complaints were filed with the Commission to begin with,

1 because for eight years, our utility was under the  
2 jurisdiction of DNR and has proven to be substandard in  
3 its operation and construction, which was part of the  
4 reason the formal complaints were filed.

5 We feel that we do need some regulation over  
6 this utility to get the problems corrected. There are  
7 still issues out there that require correction, both in  
8 the operation and management and construction.

9 We brought those to the attention of the  
10 Commission in our rebuttal testimonies. So I think that  
11 until those have been addressed, corrected and resolved,  
12 only at that point could the transfer of assets to an  
13 unregulated entity take place because, for eight years,  
14 these problems have been allowed to fester, and we -- we  
15 do need to get them addressed, corrected and resolved.

16 So I think that, A, the Commission does need to  
17 find jurisdiction over the current utility, exercise their  
18 jurisdiction through regulation to ensure that the issues  
19 are addressed, resolved and corrected.

20 Intervenors scheduled a meeting with PSC's  
21 Staffer approximately a month ago. The meeting was  
22 initiated by asking Staff for their input as to what the  
23 issues were in the case before the Commission that has  
24 been there for 18 months.

25 With the exception of one Staff member, which

1 was Mr. Martin Hummell, offering the answer of incorrect  
2 utility construction, we couldn't even begin to get a list  
3 of the issues. So I don't see how assets can be  
4 transferred until we are able to address the issues, work  
5 towards correcting them and resolving them.

6 JUDGE WOODRUFF: Okay. Ms. Fortney, do you have  
7 anything you want to add?

8 MS. FORTNEY: Yeah. I'll be short. Basically,  
9 I agree with everything Cathy's said. And I think that it  
10 would be a waste to dismiss the 480 case when we've done  
11 all the work.

12 We've had -- there's been testimony. There's  
13 been rebuttal, surrebuttals. A lot of detail in there has  
14 been shown. And if that was reviewed by the Public  
15 Service Commission, I think they would see that there are  
16 issues outstanding. If it goes to 383, they aren't going  
17 to be resolved.

18 JUDGE WOODRUFF: It's also possible that  
19 testimony from this case could be filed into a new case as  
20 well, so we wouldn't necessarily lose the benefit of  
21 what's already been filed.

22 MS. FORTNEY: Okay. Because in the beginning  
23 when we had the 0082 case, then when the 480 came up, we  
24 had to re-do everything within a different format.

25 JUDGE WOODRUFF: Right.

1 MS. FORTNEY: And there was a lot of work on  
2 everybody. And I just felt like -- you can read that  
3 thing three different ways. You can even look at our  
4 schedules when we went from appendices to schedules to  
5 attachments to cross --

6 JUDGE WOODRUFF: Yes. And part of that was  
7 because the 480 -- or this case, the complaint case was  
8 going to go to hearing without prefiled testimony, which  
9 was probably a mistake.

10 And then the 480 case, we had prefiled  
11 testimony. So the testimony is out there, it can  
12 certainly be more easily transferred than what was  
13 happening between the complaint case and the application  
14 case.

15 MS. ORLER: I'm like to --

16 MS. FORTNEY: I want to say one last thing, and  
17 that is in the Staff's rebuttal -- surrebuttals,  
18 Mr. Martin Hummell's and Harrison's, there were a lot of  
19 points in there that surrebuttals came back after that  
20 that I think a lot of that should be reconciled before any  
21 thought of moving forward.

22 JUDGE WOODRUFF: Okay. Mr. Pugh, what would you  
23 like to add?

24 MR. PUGH: Well, I don't have much. I would  
25 like to say, though, that in my own particular case, I had



1 an agreement long before -- long before there was -- the  
2 original Homeowners Association. I had an agreement to  
3 become -- to hook up to the sewer system with Folsom Ridge  
4 at that time.

5 And at -- it was two years after I made that  
6 agreement to hook up, paid my \$4800. It was two years  
7 later before we even had an active Big Island Homeowners  
8 Association.

9 Basically, when I hooked up in November of 1999,  
10 I had nothing to join. There was nothing -- nothing  
11 presented to me and nothing -- even suggested that I would  
12 become a member of anything.

13 I had the right to connect to the system at a  
14 time of my choosing as long as I paid my -- my service --  
15 paid for my services on time. That was the only thing  
16 that was required of me.

17 At this point, due to the fact that there is  
18 about 38 people out there that had these previous  
19 agreements with Folsom Ridge, I -- and due to the fact  
20 that the 390 -- the Board members of the 393 would be  
21 required to -- that I become a member, that would be their  
22 obligation to see through it that I did become a member.

23 I also have the right because my previous  
24 agreements before they even had an HOA, I have -- I have a  
25 right to connect to that system. So, basically, we have a

1 conflict of -- of -- of our interests.

2 I've already received a letter that if I  
3 connected and refused to -- refused to join the 393 that  
4 my water -- that my sewer would be disconnected. And I --  
5 that would make my house uninhabitable without the sewer  
6 system.

7 When you -- when you take it upon yourself to  
8 put my house in and make it uninhabitable, that's --  
9 that's serious business. That's basically all I've got.

10 JUDGE WOODRUFF: All right. Thank you.

11 MS. ORLER: Could I add one other thing, Judge  
12 Woodruff?

13 JUDGE WOODRUFF: Go ahead.

14 MS. ORLER: I think the phraseology in the 393  
15 information that has been circulated at this point  
16 actually says it all. If the 393 non-for-profit water and  
17 sewer corporations are willing to accept the present  
18 utility system as-is, that is an indicator that the  
19 systems and its utility are not being transferred in a  
20 form that is absent of issues.

21 As-is implies as-is. And I think that's one of  
22 the reasons why we need to get the issues clarified and  
23 the problems corrected.

24 JUDGE WOODRUFF: Okay. Well, those kind of  
25 issues will certainly be up in the case that has

1     apparently been filed yesterday. And I'm certainly not  
2     going to try and make any rulings on it today.

3             MS. ORLER: Sure.

4             JUDGE WOODRUFF: Well, that certainly brings up  
5     some new issues that I -- I had no idea are were going on  
6     when I walked in the door today. But go ahead,  
7     Mr. Comley.

8             MR. COMLEY: Just a response or two. I -- I  
9     want to reiterate. Our position continues to be that we  
10    do not believe the facts will support a finding by the  
11    Commission that the conditions that are offering service  
12    are operating in violation of the Public Service  
13    Commission. Just get that out in the open.

14            JUDGE WOODRUFF: Uh-huh.

15            MR. COMLEY: I think the testimony that's been  
16    filed in the 480 case may have usefulness in the  
17    application case. I think the testimony that -- does  
18    support the idea that the construction of the systems  
19    right now -- it is up to grade, if not exceeding, the  
20    requirements of the design guide for DNR, that there have  
21    been a multitude of -- of little improvements here and  
22    there that I think will cover quite a bit of the concerns  
23    that the Complainants have raised in years past and  
24    continue to raise.

25            So I'm thinking that based upon what Ms. Orler

1 has said and Staff and Public Counsel has said, we may be  
2 very close. I -- on the dismissal of the application  
3 case, Ms. Fortney mentioned that she did not want to waste  
4 that. And my comment about the testimony goes to that.  
5 But I did want to bring it -- again, to remind everyone,  
6 we did try to advise the Commission and the Staff and  
7 everyone in December that the possibility of dismissal of  
8 the application was eminent.

9 And I hope the people understand, we tried to be  
10 fair on that and did not want people to have any  
11 additional expenses unnecessarily. And the Commission  
12 disagreed, and I understand that's an honest disagreement.  
13 You have your schedules to protect.

14 At the same time, I hope the people do  
15 understand, we did make a very genuine effort to minimize  
16 the expenses anyone incurred in this case.

17 Mr. Pugh mentioned that he did not like the idea  
18 of joining up as a member of a new organization. I think  
19 all of us have come to the conclusion, there needs to be  
20 some entity, and that entity has to have a meaningful  
21 relationship with the subscriber service down there and  
22 there has to be some sort of the governing body and some  
23 sort of legal relationship that each can count on.

24 And the Section 393 companies, irrespective of  
25 Mr. Pugh's concerns, I think are set up to do that. I

1 would say at this stage that Mr. Pugh may be overly  
2 concerned about that relationship and what it may mean to  
3 him and his family.

4 The other thing, because of what has been said,  
5 one thing that I'm going to kind of float for  
6 consideration is that the application for the sale of the  
7 assets may at this moment be the more critical of the  
8 issues than what are in the complaint case.

9 If that is the case, then I would -- I would  
10 suggest that somewhat like what Judge Woodruff recommended  
11 earlier, that this case be continued to be in a state of  
12 suspension pending the resolution of the application for  
13 the sale of assets. That way, that can be handled.

14 The assets sale will presumably -- I -- I would  
15 presume go through. I think there is enough said already  
16 that we are very close and perhaps do come to some  
17 conclusion about how that could be done.

18 I will offer to the Commission right now that  
19 the Association is having a meeting on Monday, the 29th,  
20 to address all this. And I don't know for sure, but there  
21 may be a way of giving the Complainants in advance the  
22 copies of by-laws and other things that they may need.

23 But that is not something I control. That is  
24 not something I control.

25 JUDGE WOODRUFF: So the Association is a

1 different entity than the 393 corporation, right?

2

3 MR. COMLEY: Exactly. Exactly. That would be  
4 something the 393 companies would have to agree to do. So  
5 with that said, that's all I have to offer.

6 JUDGE WOODRUFF: All right. Ms. Orler?

7 MS. ORLER: With regards to the transfer of  
8 assets, that should include everyone who is either a  
9 utility user presently or has a reserve future right to  
10 connect and even those property owners on Big Island who  
11 are future potential utility customers.

12 And had we known that this meeting context today  
13 was going to include this parameter, I think the context  
14 of the meeting we're having right now should be open to  
15 every single residential property owner on Big Island,  
16 personally.

17 JUDGE WOODRUFF: All right. Well, of course,  
18 this meeting is just a prehearing conference on -- on this  
19 particular case. And, again, it's not intended to be an  
20 open forum for everybody.

21 Certainly, it sounds like there -- there needs  
22 to be that kind of meeting on this.

23 MS. ORLER: Yes. Definitely if we're discussing  
24 the transfer of assets. I didn't bring my files with me,  
25 but there are a number of people that are objecting to the

1 transfer of the utility assets to the 393s.

2 JUDGE WOODRUFF: We'll certainly take that up at  
3 an appropriate time. I think at this point I'm just going  
4 to let you discuss this amongst yourselves as best you  
5 can. And I realize, of course, maybe not everyone's here  
6 that may be interested in this. And see if you can --  
7 some -- some sort of resolution.

8 I'll deal with the -- the motions and so forth  
9 that will be filed in these cases as they come in. The  
10 transfer cases have not yet been assigned to me, but I  
11 expect it probably will be. I don't think anybody else is  
12 in line yet so --

13 MR. THOMPSON: Do -- your Honor, do you expect  
14 Staff to file a proposed procedural schedule within some  
15 interval after this meeting today?

16 JUDGE WOODRUFF: I'm not going to ask for that  
17 at this point. I'll let you discuss amongst yourselves as  
18 to exactly what you want to do with this.

19 Rather than asking Staff to file a proposed  
20 procedural schedule, I will ask you to file a report  
21 giving us -- giving the Commission an indication of what  
22 has happened, what will happen today and the  
23 recommendation of the parties as to how we will proceed.  
24 But you don't have to give me a specific schedule unless  
25 everyone agrees upon that.

1                   MR. THOMPSON: Will do. When would you like  
2 that?

3                   JUDGE WOODRUFF: A week would be fine.

4                   MR. THOMPSON: Thank you, sir.

5                   JUDGE WOODRUFF: Okay.

6                   MS. FORTNEY: I'm kind of confused about what we  
7 talked about today. I know Saturday there's a meeting  
8 coming up. Monday there's a meeting coming up that has to  
9 do with the 393 for the residents of the Island that --  
10 from what I get from Staff earlier and from Public Counsel  
11 is that you might need to go off and review things or look  
12 at it even more before other steps could be taken. Is  
13 that my take?

14                  JUDGE WOODRUFF: Well, it's my understanding  
15 that there's been a -- an application filed for --

16                  MR. FORTNEY: That's what I meant, that --

17                  JUDGE WOODRUFF: -- for Commission to approve  
18 that.

19                  MR. THOMPSON: Which no one's seeing.

20                  MS. FORTNEY: Right. That's what I'm saying.

21                  JUDGE WOODRUFF: Yeah.

22                  MS. FORTNEY: What are we going to talk about  
23 today if that's --

24                  MR. THOMPSON: How to proceed into those  
25 complaint cases.



1 JUDGE WOODRUFF: Right. And if you want to talk  
2 about your perspective once we're off the record, that's  
3 fine, too. I can't deal with the other case because it's  
4 not before me at the moment.

5 MS. FORTNEY: I -- well, I agree with that.

6 MS. ORLER: You're not psychic?

7 JUDGE WOODRUFF: Yeah. Aside from the fact that  
8 I haven't seen it yet, it's also not legally in front of  
9 me because this case was noticed up on the -- on the  
10 complaint cases only.

11 MS. FORTNEY: Okay. So we're just talking about  
12 the next steps, procedure schedules?

13 JUDGE WOODRUFF: Yes.

14 MS. FORTNEY: Okay.

15 JUDGE WOODRUFF: And, also, I'll encourage you  
16 to discuss other things to. And if you can reach an  
17 overall agreement, that would be wonderful.

18 MR. MILLS: Just so the record's clear, you  
19 mentioned a couple other meetings. What were you talking  
20 about?

21 MS. FORTNEY: Saturday, there's a meeting with  
22 homeowners on the island that a couple of residents have  
23 put together so other people on the island can understand  
24 more about the 393s and what's going on.

25 Folks back here sent out e-mails and things and

1     tried to express questions and answers and -- so that's  
2     going to happen Saturday.

3             MS. ORLER:   Informational meeting.

4             MS. FORTNEY:   Informational.   And then Monday is  
5     a meeting with -- to go for the --

6             MS. ORLER:   Well, it's an actual homeowners  
7     association meeting.

8             MS. FORTNEY:   The members that are connected to  
9     the system that would vote as to whether the assets should  
10    be transferred or not.

11            Ms. ORLER:   But, see, therein lies the problem,  
12    and therein lies the promise of the complaints filed  
13    before the Missouri Public Service Commission because not  
14    all individuals being billed and serviced by the  
15    Homeowners Association are members and have the right to  
16    vote.

17            Plus, going back to the Staff report of December  
18    of '06, the vote of the Homeowners Association is in the  
19    control of the developer by the voting of lots and by the  
20    appointment of three Board positions out of five.

21            So how can a vote to transfer the utility's  
22    assets be a legitimate vote?

23            JUDGE WOODRUFF:   Well, again, that's nothing I  
24    can deal with today.   Certainly, it's something for you  
25    all to discuss.

1           Before we go off the record, I want to bring up  
2 one other possibility. This case is crying out for a  
3 mediator. I can't be that, of course, since I'm the Judge  
4 in the case. But the Commission has in the past made  
5 arrangements with -- the University of Missouri has a  
6 mediation center up there at the law school.

7           If you think it would be helpful, I will  
8 certainly contact them, and we can set up a mediation  
9 session.

10           MS. ORLER: Would that be in lieu of the -- the  
11 present procedural schedule?

12           JUDGE WOODRUFF: Not necessarily. Not  
13 necessarily. But it would certainly help to get everybody  
14 together talking. Several of the -- our judges here at  
15 the Commission have also been trained in mediation. Some  
16 of them were just a few weeks ago, as a matter of fact,  
17 taking a mediation for a case last summer that we did.

18           But since this is such a complicated case, it  
19 might be able to have a professional mediator involved.  
20 So if you -- if you want to take that option, just let me  
21 know, and we'll see if we can make something -- make  
22 something work.

23           MS. ORLER: Would that situation be open only to  
24 parties to the case such as parties or complainants or  
25 could all Island residents --

1 JUDGE WOODRUFF: No. It would be open to anyone  
2 on the Island that's interested. I can't speak for  
3 exactly how the mediator up there at the Columbia would  
4 want to work it out. They might even be able to travel  
5 down there to -- to Big Island or somewhere close by to --  
6 to get involved.

7 MR. PUGH: Is this a college student from --

8 JUDGE WOODRUFF: No. It's professional people.  
9 They use it as a training tool for their students. But  
10 for something like this, I would expect it would be one of  
11 the -- the leaders of the organization. But, again, I'm  
12 -- I'm speaking in general because I haven't talked to  
13 them about it, so --

14 MR. MILLS: And with all due respect, having  
15 been through a lot of meetings with a lot of people that  
16 are involved, I'm not sure that I see that as a fruitful  
17 avenue.

18 MR. THOMPSON: I agree with everything he just  
19 said.

20 MR. PUGH: I didn't hear what you said, Lewis.

21 MR. MILLS: I said I really don't think that  
22 would be helpful. I think you'd invest a lot of time and  
23 effort in it and have the mediator throw up his hands. I  
24 really do.

25 MS. ORLER: Commit suicide.

1           JUDGE WOODRUFF: Well, I will say that in my  
2 training there, I heard a lot of cases that even in cases  
3 that can -- seem to be very intractable that when people  
4 actually get the chance to sit down and discuss it with a  
5 mediator or mediation process, a lot of times results can  
6 be achieved. Not all, but frequently, they are, so that's  
7 something you can consider.

8           All right. With that, then, we'll go off the  
9 record, and I'll leave you to your -- to your discussions.  
10 Thank you all for coming.

11           MR. THOMPSON: Thank you, your Honor.

12           MS. ORLER: Thank you.

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