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APR 02 2007

**Missouri Public  
Service Commission**

Exhibit No.: \_\_\_\_\_

Issues: Reasonableness of  
Transfer of Assets  
Technical Issues

Witness Name: James A. Merciel, Jr.

Type of Exhibit: Rebuttal Testimony

Sponsoring Party: MO PSC Staff

Case No.: WC-2006-0082

WO-2007-0277

Date Testimony Prepared: February 16, 2007

**Missouri Public Service Commission**

**Utility Operations Division**

**Rebuttal Testimony**

**of**

**James A. Merciel, Jr.**

**Folsom Ridge, LLC**

**Big Island Homeowners Water and Sewer Association, Inc.  
Big Island Water Company and Big Island Sewer Company**

**Case Nos. WC-2006-0082**

**and**

**WO-2007-0277**

**Jefferson City, Missouri  
February 16, 2007**

**Staff Exhibit No. 104**  
**Case No(s) WC-2006-0082 et al**  
**WC-2007-0277**  
**Date 3-02-07 Rptr KF**

**PF**

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

In the Matter of Cathy J. Orlor, Complainant,     )  
vs.     )  
Folsom Ridge, LLC (Owning and Controlling     )  
the BIHOA), Respondent.     )

Case No. WC-2006-0082

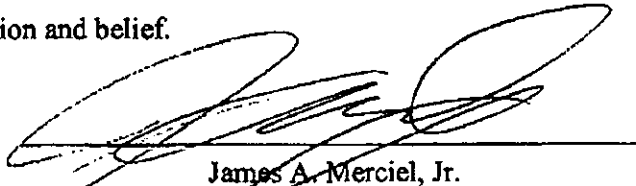
In the matter of the Application of Folsom     )  
Ridge LLC and Big Island Homeowners Water     )  
and Sewer Association, Inc. for an order     )  
authorizing the transfer and Assignment of     )  
Certain Water and Sewer Assets to Big Island     )  
Water Company and Big Island Sewer     )  
Company, and in connection there with certain     )  
other related transactions.     )

Case No. WO-2007-0277

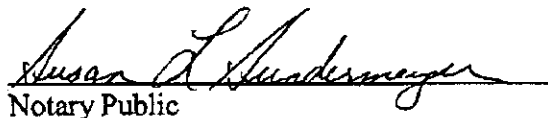
**AFFIDAVIT OF JAMES A. MERCIEL, JR.**

STATE OF MISSOURI     )  
                                       ) SS  
COUNTY OF COLE     )

COMES NOW James A. Merciel, Jr., being of lawful age, and on his oath states the following: (1) that he has participated in the preparation of the following Rebuttal Testimony, presented in question and answer form, consisting of 6 pages and including 2 schedules; (2) that the answers in the subject testimony were given by him; (3) that he has knowledge of the matters set forth in such answers; and (4) that such matters are true and correct to the best of his knowledge, information and belief.

  
James A. Merciel, Jr.

Subscribed and sworn to before me this 16<sup>th</sup> day of February, 2007.

  
Notary Public

My Commission Expires: 9-21-10



SUSAN L. SUNDERMEYER  
My Commission Expires  
September 21, 2010  
Callaway County  
Commission #06942088

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**REBUTTAL TESTIMONY**

**OF**

**JAMES A. MERCIEL, JR.**

**FOLSOM RIDGE, LLC**

**BIG ISLAND HOMEOWNERS WATER AND SEWER ASSOCIATION, INC.**

**BIG ISLAND WATER COMPANY AND BIG ISLAND SEWER COMPANY**

**CASE NOS. WC-2006-0082 and WO-2007-0277**

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1     **EXECUTIVE SUMMARY**

2             **Q.     What has been the nature of your involvement in the subject cases?**

3             A.     My involvement actually includes that in cases that I will refer to as the  
4     Big Island Cases. Those are the formal complaints filed by customers and residents of  
5     the area which were consolidated into WC-2006-0082, in which I co-authored a 2/9/2006  
6     Staff Report of Investigation filed on February 9, 2006 (Staff Report), and the certificate  
7     case filed by Big Island Water & Sewer Co., Inc., Case No. WA-2006-0480, in which I  
8     participated in the review of Rebuttal Testimony filed by Martin Hummel, filed on  
9     January 5, 2007 (Hummel Rebuttal Testimony), and WO-2007-0277. I am including the  
10    Staff Report and the Hummel Rebuttal with this testimony for reference.

11            **Q.     Please summarize the Rebuttal Testimony you are presenting?**

12            A.     I am presenting testimony stating why I believe that it is reasonable for  
13    Big Island Water Company and Big Island Sewer Company (the 393 Companies) to  
14    acquire and operate the water and sewer systems presently owned or controlled by  
15    Folsom Ridge, LLC (Folsom) and/or Big Island Homeowners Water and Sewer  
16    Association, Inc. (the Association), and the necessity for the Commission to approve the  
17    proposed transfer of assets to the 393 Companies.

18     **REASONABLENESS OF THE PROPOSED TRANSFER OF ASSETS**

19            **Q.     Do you believe that the proposed transfer of water and sewer utility**  
20    **assets to the 393 Companies is reasonable.**

1           A.     Yes, I do. The formation and operation of the 393 Companies is a valid  
2           and reasonable means of ownership and operation of these utility systems, and providing  
3           service to current involved customers and potential future customers.

4           **Q.     Are you aware that there are fundamental issues that some customers**  
5           **have with the 393 Companies?**

6           A.     Yes, I am aware that there are concerns and controversies. However, there  
7           simply is no agreement among the affected residents regarding utility service, no matter  
8           what type of water and sewer utility were to be proposed. I believe that some reasonable  
9           proposal needs to move ahead.

10          **Q.     Are there any alternatives, besides the 393 Companies, that are**  
11          **available and could work for this service area?**

12          A.     There are alternatives, but not necessarily any that would work better than  
13          the 393 Companies. My basis for this opinion is rooted in the fact that prior to the  
14          Commission's involvement, a proposal existed to transfer the assets to the Association,  
15          and most residents believed that they, in effect, owned and controlled the utility systems,  
16          though I believe that the Association was actually controlled by Folsom, as discussed in  
17          the Staff Report. The concept of the 393 Companies in fact provides for control by the  
18          customers, just as a legitimate property owners association would.

19          Alternatives to the 393 Companies could include: 1) an association that is  
20          legitimately controlled by the resident-members, although such an entity does not exist at  
21          present; 2) a regulated utility such as one that was proposed in Case No. WA-2006-0480  
22          that is controlled by the owners of Folsom, although the owners don't particularly want to

1 be in the utility business nor do some residents want them to own and control the utility;  
2 3) a regulated utility owned by another entity, however no other interested entity has  
3 emerged; 4) for the status quo prior to the Big Island Cases to have remained, meaning  
4 the Folsom would own and operate the utilities unregulated, however I consider this to be  
5 unrealistic because of the controversies and because I believe the lack of regulation in  
6 that situation would not be proper.

7 **Q. Do you believe that Commission approval for the proposed transfers**  
8 **is needed?**

9 A. Considering that I believe the utility as it was operated by Folsom and the  
10 Association would be subject to the Commission's jurisdiction, and based on internal  
11 discussions, it is possible that the Commission needs to approve the transfer, though I am  
12 not in a position to express a legal conclusion. However, from a practical standpoint,  
13 considering the controversies and the fact that there are pending complaints before the  
14 Commission, I think that it would be reasonable for the Commission to approve or  
15 disapprove the transfer.

16 **SPECIFIC ISSUES**

17 **Q. Are there issues that the Commission would need to address before**  
18 **approving the transfer?**

19 A. There are some technical issues with regard to these systems, and they  
20 were addressed in Hummel Rebuttal Testimony as applicable to the Proposed Regulated  
21 Utilities. Most of the technical issues beginning on Page 4 Line 16, to the extent they  
22 have not already been addressed, are also applicable to the 393 Companies. The 393

1 Companies, as non-regulated entities, have flexibility with regard to how they may wish  
2 to handle these issues, if at all.

3 Additionally, I believe that the Commission should address the by-laws proposed  
4 by the 393 Companies. The Staff has reviewed drafts, and is in the process of  
5 formulating some suggested modifications. However, I believe that the incorporators of  
6 the 393 Companies have created drafts that are thorough, addressing needed customer  
7 rules as well as expansions of facilities due to new real estate development.

8 **Q. Does the Commission need to address specific rates, contribution**  
9 **charges, or other charges?**

10 A. Since the 393 Companies are not subject to regulation, I don't think any  
11 charges need to be specifically approved. Also, rates and charges would likely be set  
12 somewhat differently than those for a regulated company. One fundamental difference is  
13 that regulated companies would normally incorporate stockholder investment along with  
14 its return and "plant life" depreciation, whereas the 393 Companies would not have  
15 investment as such, rather the customers would contribute the capital in the form of  
16 relatively large connection charges. A charge of \$2,000 for water and \$4,800 for sewer  
17 had been charged to pre-existing customers and potential customers, and with respect to  
18 the 393 Companies these same charges are proposed for lots for which Folsom was not  
19 involved with development. The 393 Companies may also need to set up reserve funds,  
20 which regulated companies normally do not do. The Missouri Department of Natural  
21 Resources has requirements for reserve funds applicable to non-regulated water utilities.



1     **CONCLUSION**

2             **Q.     Are there any other issues that need to be addressed, from the Staff's**  
3 **perspective?**

4             **A.     Not at this time, however the Staff may comment on other issues as they**  
5 **arise in surrebuttal or live testimony, as necessary.**

6             **Q.     Does this conclude your rebuttal testimony?**

7             **A.     Yes.**

Exhibit No.:  
Issues: Condition of Plant Facilities  
Customer Pipeline CIAC  
Witness: Martin L. Hummel  
Sponsoring Party: MO PSC Staff  
Type of Exhibit: Rebuttal Testimony  
Case No.: WA-2006-0480  
Date Testimony Prepared: January 5, 2007

**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY OPERATIONS DIVISION**

**REBUTTAL TESTIMONY**

**OF**

**MARTIN L. HUMMEL**

**BIG ISLAND WATER & SEWER COMPANY, INC.**

**CASE NO. WA-2006-0480**

**Jefferson City, Missouri  
January 2007**

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

In the Matter of the Application of Big )  
Island Water & Sewer Company, Inc. for )  
a Certificate of Convenience and )  
Necessity Authorizing It to Construct, )  
Install, Own, Operate, Control, Manage )  
and Maintain a Water and Sewer System )  
for the Public Located in an )  
Unincorporated Area of Camden County, )  
Missouri )

Case No. WA-2006-0480

**AFFIDAVIT OF MARTIN L. HUMMEL**

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF COLE     )

Martin L. Hummel, of lawful age, on his oath states: that he has participated in the preparation of the following Rebuttal Testimony in question and answer form, consisting of 6 pages of Rebuttal Testimony to be presented in the above case, that the answers in the following Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.

  
Martin L. Hummel

Subscribed and sworn to before me this 4<sup>th</sup> day of January, 2007.



SUSAN L. SUNDERMEYER  
- My Commission Expires  
September 21, 2010  
Callaway County  
Commission #06942086

  
Notary Public

My commission expires 9-21-10

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**REBUTTAL TESTIMONY**

**OF**

**MARTIN L. HUMMEL**

**BIG ISLAND WATER & SEWER COMPANY, INC.**

**CASE NO. WA-2006-0480**

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**REBUTTAL TESTIMONY**  
  
**OF**  
  
**MARTIN L. HUMMEL**  
  
**BIG ISLAND WATER & SEWER COMPANY, INC.**  
  
**CASE NO. WA-2006-0480**

Q. Please state your name and business address.

A. My name is Martin L. Hummel, and my business address is P.O. Box 360,  
Jefferson City, Missouri 65102.

Q. By whom are you employed and in what capacity?

A. I am employed by the Missouri Public Service Commission (Commission) as  
an Engineer in the Water & Sewer Department (W/S Dept) of the Utility Operations Division.

Q. How long have you been employed by the Commission?

A. I have been employed by the Commission since February 1989.

Q. What is your educational background?

A. I received a Bachelor of Science degree in Education-Science and a Bachelor  
of Science degree in Engineering from the University of Missouri-Columbia.

Q. What is your employment experience?

A. Prior to my employment at the Commission, I worked with the Missouri  
Department of Natural Resources (DNR) in the Water Pollution Control Program; I worked as  
a Research Associate on water-related projects with Louisiana State University-Baton Rouge;  
and as a Project Engineer with a consulting engineering firm, primarily on wastewater  
treatment.

**EXECUTIVE SUMMARY**

Q. What is the purpose of your Rebuttal Testimony?

A. The purpose of this testimony is to comment on the condition of the water and sewer facilities proposed to be owned and operated by Big Island Water & Sewer Company, Inc. (BIWS), the appropriate contribution-in-aid-of-construction (CIAC) amounts per connection to apply to pipeline installation and plant facilities, and on monthly rates.

**CONTRIBUTIONS IN AID OF CONSTRUCTION**

Q. Are you familiar with the facilities and the company's operation?

A. Yes. I have visited the facilities, and I have reviewed information submitted by various parties regarding the facilities.

Q. Have you evaluated what would be an appropriate amount of CIAC for each water connection and sewer connection?

A. Yes. If you take the prudent cost of installing the existing water distribution mains and collecting sewer pipelines, and divide that cost by the number of connections that are to be served by that pipe, you get the appropriate amount per connection necessary to pay the capital cost of installation. The pipelines would then be considered as "contributed plant" in which the utility has no investment. This is what is generally done through the water main and collecting sewer extension rules that are in most tariffs of the water and sewer companies regulated by the Commission.

Q. How would this amount be applied?

A. This would be paid as a CIAC charge for each connection, water or sewer, whether that be for a single residence or involving several properties for a developer. The primary purpose at this stage is to determine a proper pipeline CIAC charge that should apply

Rebuttal Testimony of  
Martin L. Hummel

1 to both existing homes and future development connecting to the existing pipeline. Future  
2 pipeline extensions should be handled by an extension rule, where the cost is paid either by  
3 developers or individual new customers, with a refund to the payers as additional connections  
4 are made.

5 Q. What is the amount that the Staff recommends be used as a pipeline CIAC for  
6 the BIWS systems?

7 A. \$595 for each sewer connection and \$675 for each water connection. This is  
8 derived from evaluating the area designated Big Island Lakesites. This area includes the  
9 majority of the existing homes, along with additional available building sites on the Island  
10 interior. One can use a plan view of the area to make a good estimate of the number of lots  
11 needing connections, and the applicable length of pipe. Much of the rest of the area is  
12 undeveloped, or is large tracts of land where the expected number of connections is less  
13 certain. For the approximate 17,500 feet of water and sewer pipeline, for the complete loop as  
14 presently constructed, I have estimated 278 lots connecting to make contributions to pay for  
15 the pipelines. To calculate the per connection contribution, I divided the net cost of the  
16 pipeline installations by this number of lots. The net cost for the installation of the pipelines  
17 is shown in the rate base worksheet included in the accounting schedules attached to Staff  
18 witness Paul Harrison's testimony (\$187,770 for the water pipelines and \$165,800 for the  
19 sewer pipelines).

20 Q. How should this amount be applied to existing customers and those residents  
21 that have paid for the right to connect to these systems in the future?

22 A. The existing customers and the potential customers that have reserved service  
23 connections, and which have paid amounts of \$4,800 for sewer and/or \$2,000 for water,

Rebuttal Testimony of  
Martin L. Hummel

1 should have \$595 sewer/\$675 water of that amount recognized as paying for the pipelines.  
2 Additional amounts may be applied to the cost incurred to install the service sewer and the  
3 water service line; also an amount could be held for funding of water meter installation, which  
4 often is paid by new customers as a connection charge, and which I believe should apply to  
5 new BIWS customers as well. For the purposes of the issuance of certificates to BIWS, the  
6 Staff believes these amounts should be set at the water and sewer connection fees proposed by  
7 the Company (\$1,000 each for water and sewer service). The remainder of what was paid  
8 should be refunded, if BIWS is to be set up as most utilities should with stockholder  
9 investment funding the source of water supply (well), storage tank, and sewage treatment  
10 facility.

11 Q. Is the service area requested in the application appropriate for proposed  
12 facilities and clearly described?

13 A. The service area includes all of Big Island and a small portion off of the Island.  
14 The facilities appear to be adequate at this time to serve this area. The written description will  
15 need to be revised to make a user friendly version for a prospective Tariff.

16 **FACILITY-RELATED ISSUES**

17 Q. Are there concerns regarding the facilities that you believe need to be  
18 addressed in order for BIWS to provide safe and adequate service?

19 A. Yes, the following list includes the items of which the Staff is currently aware:

- 20 • Define water service line, service connection, water main and point-of-delivery. The  
21 "main" definition must include any pipe that has flow for more than one customer,  
22 regardless of size, including service connections that serve two customers. The  
23 service connection pipe under the road going to a lot should be part of the service  
24 connection, operated and maintained by the utility. Also define the collecting  
25 sewers, and service sewers, including any service sewers serving more than one  
26 customer. As this is a pressure sewer system requiring pump units and septic tanks at  
27 each residence, specifications of required pump units and septic tanks along with



Rebuttal Testimony of  
Martin L. Hummel

1 maintenance responsibility needs to be prescribed. Much of this definition work can  
2 be modeled after the W/S Department's example tariff rules.

- 3
- 4 • Produce "as-built" drawings showing the location, size, and appurtenances of both  
5 the water system and the sewer system. This should include locations of "service  
6 connections," "service sewers" and small diameter pipe that serve more than one  
7 home. Some of this may need to be addressed as part of daily operation, such as,  
8 adding the location of a section of pipe to "as-built drawings" when exposed during a  
9 maintenance excavation.
- 10
- 11 • There will be leaks on both systems, water and sewer, both of which are under  
12 pressure. How will the operator know when they occur, and what is to be the  
13 response? The leaks will vary from small leaks near shutoff valves possibly on the  
14 customer's side, to a large sewer or water leak or break, saturating the soil around the  
15 pipeline and perhaps flowing directly to the lake. Flow measurement capability on  
16 the wastewater system must be provided. Pressure monitoring/recording on the  
17 wastewater system should be considered.
- 18
- 19 • A utility owned shutoff valves should be installed for each water service connection  
20 and each sewer service connection.
- 21
- 22 • All valves must be shown on plans and the valve itself in the field marked clearly as  
23 either Water or Sewer.
- 24
- 25 • Water meters should be installed for all new customers, and a meter installation  
26 program should be undertaken for existing customers. This system is big enough  
27 with the potential of too many excess water use problems to operate efficiently and  
28 equitably without meters and on a flat monthly rate indefinitely. Examples of  
29 problems are: excess use for lawn watering, leaving water run to prevent freezing of  
30 an exposed waterline to a boat dock or in a house that is vacant in winter, filling  
31 swimming pools or simply leaving a plumbing fixture leaking. To the extent that any  
32 excess drinking water goes to the sewer it also results in additional wastewater  
33 treatment costs.
- 34
- 35 • Establish a water main repair procedure and evaluate the main for the installation of  
36 isolation valves, air release valves and flush valves. The valving should be  
37 established that enables an efficient repair while limiting the time and number of  
38 customers out of service.
- 39
- 40 • All sewer customers must have a septic tank and an effluent pump. The responsible  
41 party for installation, construction inspection, operation, repair, electric power,  
42 operational inspections and solids hauling must be designated. It is recommended  
43 that the utility be responsible for tank/pump standards, inspections,  
44 repair/replacement of pump, and solids hauling. Solids hauling should be based on  
45 annual tank inspections, not on a set time period.
- 46

Rebuttal Testimony of  
Martin L. Hummel

- 1 • Establish a written tapping procedure to be provided to plumbers making  
2 connections. Instructions should clearly state that both water and sewer are the same  
3 type and size, and address locating the correct main. If there are any portions of the  
4 main that were laid curved and therefore under stress, an appropriate cautionary  
5 statement should be included.  
6
- 7 • Additional storage capacity is needed on the water system. It is the Staff's  
8 understanding that a new standpipe has been planned and the construction permit  
9 issued with construction expected in the spring of 2007.  
10
- 11 • Evaluate the location and installation of the water service connections, water service  
12 lines, and service sewers, with a determination made on a case by case basis whether  
13 a specific improvement, eg.separation, should be implemented.  
14

15 Note: During the pendency of this case some items have been addressed, such as, leak repair,  
16 relocation of main and establishing a drinking water sampling plan.  
17

18 **CUSTOMER RATES**

19 Q. What monthly rates should be approved?

20 A. Based on Staff witness Paul Harrison's audit, and a reasonable projected  
21 number of customers, rates should be set at the amounts shown on the ratemaking income  
22 statement included with Mr. Harrison's testimony. Although I believe water meters are  
23 important, and metered rates should thus be implemented, the Staff has not studied water  
24 usage sufficiently at the time of this rebuttal testimony to determine metered rates, so interim  
25 flat rates are being proposed.

26 Q. Does this conclude your pre-filed direct testimony?

27 A. Yes, it does.

# STAFF REPORT OF INVESTIGATION

Case No. WC-2006-0082 et al.

Prepared By:

Jim Merciel & Martin Hummel

Water & Sewer Department

February 9, 2006

## **BACKGROUND**

On August 18, 2005, an individual person filed a formal complaint against Folsom Ridge, LLC (Folsom), owning and controlling the Big Island Homeowners Association (BIHOA). The BIHOA is purportedly an association of property owners, residents and utility customers that owns and operates a water and sewer system for the residents in the area. Within the next several weeks eight additional individual persons also filed formal complaints against Folsom.

The points raised in the various formal complaints are somewhat varied, and are summarized in Attachment 1. Some issues raised in these complaints are clearly matters over which the Commission has no jurisdiction. Common among all of the complaints are the claims that the BIHOA is not a legitimate association, but is controlled by the land developer in the area who constructed the water and sewer systems. A second common claim is that non-members of the BIHOA are essentially utility customers. As such, the BIHOA or perhaps the developer should be regulated as a water and sewer utility. Some complaints also allege that the water and sewer systems do not comply with the regulations of the Missouri Department of Natural Resources (DNR), and some allege improper or inconsistent rules and charges regarding service connections.

Among other activity in these complaint cases, all of which have been consolidated into this case, the Commission issued its Order Denying Motion to Dismiss, and Directing Staff to Investigate and Report on October 18, 2005, in which it directed the Staff to prepare a report. This report is intended to comply with that order.

## **OVERVIEW**

The area known as Big Island is located north of Roach, MO in Camden County. The island is approximately 160 acres in size, with most of the present development along the lake shore. There have been individual property owners in the area for several decades, but now the Folsom developers are involved with structured land development. Additional development could be undertaken inland from lakefront lots, and also in an area that is located off of and adjacent to the island.

Folsom began constructing a wastewater treatment facility and a community water system in 1998, for use by both owners of newly developed lots and existing individual homeowners. Folsom had apparently planned to transfer ownership to some type of an association, although the BIHOA is an entity that is controlled not by the homeowners, but rather by the same people that control Folsom.

Appendix A

The existing customers consist of both full-time and part-time residents. There are currently approximately 50 customers. The water system is a single well system with a capacity to serve 65 residential customers, and the sewer system consists of a pressure collection system requiring pump units on customers' premises, and a recirculating sand filter treatment facility with capacity to serve 80 residential customers. Folsom's current plans are to provide capacity to serve a total of 230 customers.

One well-known deficiency of the utility system is that during construction, both the water pipelines and the sewer pipelines were placed in the same trench, contrary to plans submitted to and approved by the DNR, and in violation of the Missouri Clean Water Law and the Missouri Safe Drinking Water Law. Subsequently, per an April 2004 settlement agreement between Folsom and DNR (represented by the Office of the Attorney General), Folsom agreed to make corrections to the water distribution system. This construction error is being corrected at the cost of the developer.

### **RESOLUTION OF THE UTILITY-RELATED ISSUES**

There is no question that central water and sewer facilities are desirable in this area. The Staff believes that among the problems associated with the water and sewer systems, one reason why these complaints were filed, and why the situation exists as it is, is that Folsom believed that it could create an association of utility customers, but retain for itself control of the association.

Based on its experiences with many types of small water and sewer utilities, both regulated and unregulated, the Staff firmly believes that a utility owned and controlled by an association should truly be controlled by the customers who get their utility service from their association. The Commission espoused three (3) criteria for such a "legitimate" association in Case No. WD-93-307, which involved utility assets that were previously owned by a regulated water utility, but were acquired by an association known as Rocky Ridge Ranch Property Owners Association. These three criteria, sometimes referred to by the Staff as the "Rocky Ridge Ranch Points," are as follows:

1. The association's membership must include all of its utility customers, and the association must operate the utility only for the benefit of its members;
2. The association must base the voting rights regarding utility matters on whether a person is a customer as opposed to allowing one (1) vote per lot, which would not be an equitable situation if a person or entity owned a majority of lots irrespective of whether each of those lots subscribed to the utility service; and
3. The association must own or lease the utility system so that it has complete control over it.

Based upon the above criteria, the Staff does not believe that the BIHOA is a "legitimate" homeowners association, since not all of its customers are members and, also since the developer has control of the association, not the customers. Also, as the Staff understands, the area in which utility service is being provided is not comprised of one subdivision with a single association of all lot owners. Rather, there are different platted areas within the overall service area with the provisions for separate associations of property owners. As a result, ownership of the utility systems by a single, normal homeowners association is not practical.

However, a type of utility that can be formed to operate sewer systems and water systems, and that is similar in nature to a subdivision association, is what is commonly called a "393 nonprofit utility." This type of utility is a not-for-profit corporation that is established, organized and operated in accordance with the provisions of Chapter 393, RSMo. Specifically, Sections 393.825 through 393.861 govern nonprofit sewer utilities and Sections 393.900 through 393.954 govern nonprofit water utilities. Generally, 393 nonprofit utilities are similar to homeowners associations in that the customers, and not a developer or other property owners, have control over the utility in that the utilities' customers are members of the utility corporation. One disadvantage of either a "legitimate" homeowners association or a 393 nonprofit utility, from a developer's point of view, might be that existing customers could assert some control over additional development. Another disadvantage, in this specific situation, is that there appears to be some disagreements between various people or groups of people that include the developers, some existing customers, and some residents who could become customers in the future. As a result, the level of cooperation needed to establish, organize and operate 393 nonprofit utilities may not exist.

Alternatively, Folsom, as the owner of the utility systems, could establish a regulated water and sewer company and obtain the necessary authority to operate such a company from the Commission, through the Commission's issuance of a certificate of convenience and necessity (CCN) for water and sewer service. Indeed, Folsom requested additional time after the prehearing conference held in this case on December 8, 2005, to consider this option and is still actively doing so. If Folsom or an affiliated utility company were to seek a CCN, they would need to show technical, managerial, and financial capacities. This means, among other points, that they would need to be able to show that they will continue into the future with proper construction, good day-to-day operations and management, prompt response to problems and issues, and adequate funding for needed improvements, expansions, and repairs. Specifically, Folsom would need to show how it will improve on these points as related to how these systems were constructed with the noted deficiencies. A strategy of utility management that is independent of the developers might be one answer to this issue. In a CCN case, the Staff would also need to obtain and study data on the utility systems that could include lengths and sizes of pipelines, capacities both existing and proposed, component costs, customer numbers, sources of capital, and proposed rules for such things as ownership and maintenance responsibility of sewer pump units on customers' premises. The source of capital for Folsom apparently includes capital contributions that have been paid by not only some existing customers but also some residents who are not yet connected.

Alternatives to 393 nonprofit utilities or certificates held by Folsom or an affiliate could include unrelated utility entities that would acquire the utility assets from Folsom, such as a public water/sewer district or another regulated utility. However, there are no such entities available at the present time.

## **CONCLUSIONS**

The Staff believes that either Folsom needs to file an application for a CCN to provide water and sewer service under the Commission's jurisdiction, or that a group of customers needs to create appropriate 393 nonprofit water and sewer utility entities so that the utility systems may be operated in this manner. Although 393 nonprofit utilities are not regulated by the Commission, the Staff would be willing to assist the customers and Folsom regarding capital structure, rates and charges, and rules for pipeline extensions and system expansion for future development, as well as assisting as requested in the development of the 393 nonprofit utilities.

Regardless of the organizational structure that is established for these water and sewer utility systems, it is clear that the technical oversight and construction inspection needs to be improved over what has been done in the past. Additionally, the management of the utility needs to be independent of the developer, and neutral to issues regarding future land development, even if the developers are the owners of the utility.

Big Island/Folsom Ridge  
Summary of Formal Complaints

WC-2006-0082 (Orler) – developer control, service to non-members, fees charged to non-customers

WC-2006-0090 (Pugh) – service to non-members, improper installation and permit compliance, improper real estate disclosure, developer control

WC-2006-0107 (Weir) – developer control, entity acts as a utility rather than an association, improper installation and permit compliance, DNR violations, county road violations, fees charged to non-customers

WC-2006-0120 (Temares) – improper real estate disclosure, developer control, entity acts as a utility rather than an association

WC-2006-0121 (Kentner) – entity acts as a utility rather than an association, utility charges, fees charged to non-customers, connection requirements

WC-2006-0122 (Schrader) – a promise to not charge fees to non-customers, improper real estate disclosure, improper installation and permit compliance, forfeit of the right to connect after a certain time, developer control, system capacity issues, threat and assault by utility/developer

WC-2006-0129 (Stoyer) – leaks from treatment plant, health hazard, improper installation and permit compliance, developer control, fees charged to non-customers, service to non-members

WC-2006-0138 (C. Fortney) – entity acts as a utility rather than an association, fees charged to non-customers, non-members forced to pay association fees, interference with real estate closure, developer control

WC-2006-0139 (D. Fortney) – non-members forced to pay association fees, a promise to not charge fees to non-customers, demand for past fees, interference with real estate closure, improper installation and permit compliance, forfeit of the right to connect after a certain time, service to non-members

**AFFIDAVIT OF JAMES A. MERCIEL, JR.**

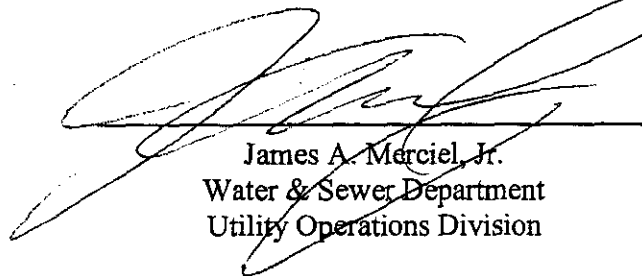
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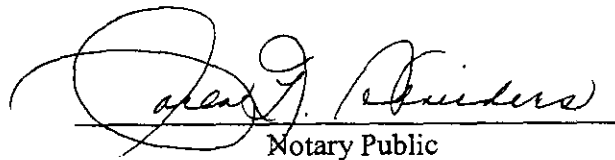
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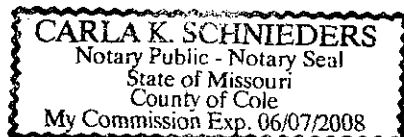
James A. Merciel, Jr., of lawful age, on his oath states: (1) that he is a member of the Staff of the Missouri Public Service Commission; (2) that he participated in the preparation of this Response to Order Directing Filing ("Response") and the *Staff Report of Investigation* ("Staff Report") included in the attached appendix; (3) that he has knowledge of the matters set forth in this Response and the Staff Report; and (4) that the matters set forth in this Response and the Staff Report are true and correct to the best of his knowledge, information and belief.

  
James A. Merciel, Jr.  
Water & Sewer Department  
Utility Operations Division

Subscribed and sworn to before me this 9<sup>th</sup> day of February 2006.

  
Notary Public

My Commission Expires: June 7, 2008





**AFFIDAVIT OF MARTIN HUMMEL**

STATE OF MISSOURI     )

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Case No. WC-2006-0082 et al.

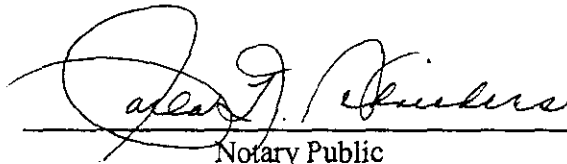
COUNTY OF COLE     )

Martin Hummel, of lawful age, on his oath states: (1) that he is a member of the Staff of the Missouri Public Service Commission; (2) that he participated in the preparation of this Response to Order Directing Filing ("Response") and the *Staff Report of Investigation* ("Staff Report") included in the attached appendix; (3) that he has knowledge of the matters set forth in this Response and the Staff Report; and (4) that the matters set forth in this Response and the Staff Report are true and correct to the best of his knowledge, information and belief.



Martin Hummel  
Water & Sewer Department  
Utility Operations Division

Subscribed and sworn to before me this 9<sup>th</sup> day of February 2006.

  
Notary Public

My Commission Expires: Jun 7, 2008

