

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

In the matter of the Application of)	
Folsom Ridge LLC and Big Island)	
Homeowners Water and Sewer Company,)	
Inc. for an order authorizing the transfer)	Case No. _____
and Assignment of Certain Water and)	
Sewer Assets to Big Island Water)	
Company and Big Island Sewer)	
Company, and in connection therewith)	
certain other related transactions.)	

JOINT APPLICATION
FOR APPROVAL OF TRANSFER OF ASSETS TO NONPROFIT
COMPANIES ORGANIZED UNDER CHAPTER 393, RSMO

Come now Folsom Ridge LLC and Big Island Homeowners Water and Sewer Association, Inc. (sometimes collectively referred to a “Applicants”) in accordance with Section 393.190.1, 4 CSR 240-3.310 and 4 CSR 240-3.605, and for their application authorizing the transfer and assignment of assets to Big Island Water Company and Big Island Sewer Company (the 393 Companies), state the following to the Commission:

APPLICANTS

1. Folsom Ridge LLC (Folsom) is a limited liability company organized under the laws of the state of Colorado and authorized to engage in business in the state of Missouri. A copy of Folsom’s Certificate of Authority to Transact Business in Missouri issued by the Missouri Secretary of State is attached as Exhibit 1. Folsom is generally engaged in the business of real estate development. It also owns certain assets used or useful in the provision of water and sewer service on Big Island, Lake of the Ozarks.

2. Big Island Homeowners Water and Sewer Association, Inc. (the Association) is a nonprofit homeowners association organized under the laws of the State of Missouri. A copy of

the Association's Certificate of Good Standing is attached as Exhibit 2. The Association is the operator and business administrator of the water and sewer systems on the Island. It joins in this application to the extent of its right, title and interest, if any, in the assets.

3. Approximately 60 customers are served by the water and sewer facilities subject to this application.

4. Neither applicant is a public utility under the laws of the State of Missouri. However, both are respondents in complaints filed before this Commission and pending in Case No. WC-2006-0082 (consolidated). Neither applicant has annual reports or assessment fees that are overdue.

5. Pleadings, notices, orders and other correspondence and communications concerning this Application should be addressed to the following:

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THE TRANSACTION

6. Subject to the terms and conditions of an Agreement For Sale And Transfer Of Water Distribution System And Wastewater System, an unexecuted copy of which is attached hereto as Appendix 1,¹ (the Purchase Agreement), Folsom and the Association will transfer and assign to the 393 Companies, and the 393 Companies will acquire from Folsom and the Association, all the assets used or useful by the applicants in offering and providing water and sewer service, all as more detailed in the Purchase Agreement. With the exception of certain connection fees applicable to identified lots on Big Island, Folsom will receive no payment by reason of this transaction. The members of the Association will receive no payment by reason of this transaction. Resolutions of the members of Folsom Ridge and the Board of Directors of the Association will be late filed as Exhibits 3 and 4.

NO DETRIMENT

7. The proposed transfer and assignment and related transactions will not be detrimental to the public interest because they will not result in any reduced level of service or reliability for the customers being served by the systems currently. Those customers will see no interruption in their day to day utility services due to the transaction.

8. The operations of these systems are the subject of complaints pending in Case No. WC-2006-0082. The transactions contemplated by this application are designed to eliminate

¹ This document is waiting execution by the parties and finalization of some exhibits, but applicants expect no material changes to the text of the agreement itself.

further disputes respecting the proper entity that provides and charges for water and sewer services. Resolve of those disputes is in the public interest.

9. The purchasers are nonprofit companies organized under select provisions of Chapter 393. Big Island Sewer Company was organized under and pursuant to the provisions of Sections 393.825 through 393.861 RSMo 2000 and Big Island Water Company was organized under and pursuant to the provisions of Sections 393.900 through 393.951 RSMo 2000. These companies have been created by local residents of Big Island and/or customers of the water and sewer services now provided by the Association. The 393 Companies shall be under the control of the local residents. Rates and conditions of service will be developed and administered by companies that are controlled by the customers they serve.

10. The 393 Companies have contracted with, or intend to contract with, Lake Ozark Water & Sewer LLC (LOWS) to provide operation, maintenance and other services pertaining to the water and sewer assets. LOWS has extensive experience in the operation and maintenance of systems this size and larger. LOWS is currently the contract operator for water and sewer systems under Commission receivership. LOWS is the current operator of the systems subject to the transfer contemplated in this application.

11. The transfer and assignment of these assets may have an impact on the tax revenues of the Missouri political subdivisions in which any structures, facilities or equipment involved are located, but the extent of that impact has not been quantified.

JURISDICTION

12. As described below, Applicants believe that the Commission does not have jurisdiction over the proposed transaction. Therefore this application is contingent upon the Commission's exercise of jurisdiction. Applicants file their application for approval under

Section 393.190.1 RSMo 2000 out of an abundance of caution in case the Commission determines that the statute applies to their proposed transaction. Whether or not the Commission ultimately determines that it has jurisdiction over this transaction, Applicants request that such a decision be made promptly and if approval is necessary, that it be granted in an expedited fashion so that Applicants can complete their transaction in a timely fashion. Closing for the transaction is scheduled no later than March 31, 2007.

Applicability of Section 393.190.1 RSMo

13. Under Section 393.190.1 RSMo, no water corporation or sewer corporation may sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system to any other corporation without Commission approval. Neither of the applicants constitutes a water corporation or sewer corporation as defined in Section 386.020(49) and (59). As mentioned above, complaints have been filed alleging that the applicants are subject to regulation by this Commission but no findings to that effect have been made and the applicants assert that the complaints have no merit.

14. However, on January 11, 2007, the Commission entered an order in Case No. WC-2006-0082 lifting an earlier order which suspended proceedings. As part of the discussion in the Order, the Commission indicated probable jurisdiction as it noted the provisions of Section 393.190.1, RSMo 2000. The Commission raised the issue of this statute's applicability if the Commission finds favorably on the complaints. In the closing paragraph of that order, the Commission also observed that "[c]learly, the uncertainties surrounding this situation need to be resolved as soon as possible."

15. Like the Commission, the Applicants are anxious to end uncertainty about the manner in which sewer and water service is provided on Big Island, Lake of the Ozarks and the

authority of the entities providing that service. The Staff of the Commission has recommended this sale as a possible solution to the complaints filed in WC-2006-0082. Implementation of this solution on an expedited basis would serve to simplify the proceedings involving Big Island before this Commission, moot the complaints, and otherwise serve the public interest.

16. Applicants have filed this application specifically reserving their defenses to the complaints in WC-2006-0082 and reserving their rights to contest the Commission's jurisdiction over their operations or over proposed sale of their property. In the interest of time and efficiency, and to avoid the possibility that the transaction with the 393 Companies could be later held invalid, Applicants submit this application contingent upon the Commission's exercise of **limited or probable jurisdiction** for the singular purpose of reviewing and approving the proposed sale of assets to the 393 Companies.

WHEREFORE, Applicants respectfully request that the Commission issue its Order:

a. Determining that it lacks jurisdiction over the subject matter of the Application and dismissing the same.

If the Commission does not render the relief requested in section a., then Applicants respectfully request the Commission issue its Order:

b. Authorizing the Applicants to perform in accordance with the terms of the executed Purchase Agreement;

c. Authorizing the transfer and assignment of the identified water and sewer assets of the Applicants as more fully described in the executed Purchase Agreement;

d. Authorizing the Applicants to enter into, execute and perform in accordance with the terms of all other documents which may be reasonably necessary and incidental to the

performance of the transactions which are the subject of the executed Purchase Agreement and this Application; and

e. Granting such other relief as may be deemed necessary to accomplish the purposes of the Purchase Agreement and the Application and to consummate the transfer and assignment of the assets and related transactions pursuant to the executed Purchase Agreement.

Respectfully submitted,

/s/ Mark W. Comley

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ATTORNEYS FOR FOLSOM RIDGE AND BIG ISLAND
HOMEOWNERS WATER AND SEWER ASSOCIATION,
INC.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 22nd day of January, 2007, to General Counsel's Office at gencounsel@psc.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov and via U.S. Mail, postage prepaid, to:

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