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May 17, 2006

To: Missouri Public Service Commission
Re: Case # WC-2006-0082 Orler vs. Folsom Ridge (Big Island)

Since I am a Big Island resident and will not be able to attend the public hearing on June 2, 2006, I am requesting this letter be presented at that hearing and become a part of the official record.

Developer, Folsom Ridge, purchased a large parcel of undeveloped land on Big Island at Lake of the Ozarks. There were a number of pre-existing homes on the Island at the time of the purchase. All of the complainants are owners of pre-existing homes. The developer installed a community water and sewer system which would service his future development. As a courtesy, the developer allowed nearby pre-existing homeowners to purchase taps for their houses with the understanding they could connect to the community utility system at that time or in the future. A document was subsequently recorded which created the Big Island Homeowners Association - the governing entity for the new community water & sewer system. (It could have been more appropriately named Big Island Water and Sewer Association.) Pre-existing homeowners who purchased taps and hooked into the system, or now had the option of hooking into the system, were asked to sign a ratification of the homeowners association agreement. Those who signed ratifications clearly obligated themselves to abide by the rules for the use of the system. They received the benefit of community water and sewer and agreed to the responsibilities which accompanied that benefit. However, in several instances homeowners purchased taps but later refused to sign ratifications and in at least one instance, a pre-existing homeowner actually hooked up to the sewer system but refused to sign a ratification. Instead of disconnecting that homeowner from the system, the association allowed them to remain on line.

Big Island homeowner association meetings were held. At least some of those meetings were attended by both Cathy (Litty) Orler and Ben Pugh who participated in the discussions. At one such meeting, a majority of the homeowners in attendance decided to start imposing a nominal monthly administration fee on all homeowners who had an "unconnected tap". It was that decision by the homeowners (not the developer) which ultimately led to the filing of these PSC complaints some years later. It seems the simplest resolution would be to rescind that action.

Cathy Orler (complainant) has a tap which was in place when she and her ex-husband purchased their home on Big Island. She has the option of connecting to community water and sewer but has not done so. Although it is my understanding Ms. Orler's former husband, Jeff Litty, signed a HOA ratification agreement, Ms. Orler claims she has not, is therefore not a member of the homeowners association, and cannot be made to pay the nominal monthly administration fee. In an effort to resolve this dispute, the developer and the homeowners association are willing to concede Ms. Orler did not sign a ratification agreement, is not connected, and is therefore not obligated to pay the nominal administrative fees. (She would be expected to sign a ratification

prior to connecting to the system and would pay a "connection fee" at that time) Although this is the monetary relief she requested, it is no longer the relief she desires. Her complaint with the P.S.C. has become a personal vendetta. The P.S.C. has become Ms. Orler's personal weapon that she is wielding against the developer and the neighbors who have opposed her course of action. Ms. Orler's continued pursuit through the PSC generates substantial legal expenses and loss of time to the developer and the certainty of skyrocketing utility costs to her neighbors. There is a sense of outrage on Big Island that someone who doesn't avail themselves of our water or sewer services is having such a major impact on those who do.

Ms. Orler and Mr. Pugh are partners and ringleaders in the vendetta against the developer. They actively solicited the other complainants. Mr. Pugh purchased a sewer tap only. Like Ms. Orler, he refused to sign the ratification agreement for the homeowner covenants. Like Ms. Orler, he claims he is not a member of the homeowner association. However, Mr. Pugh HAS connected to the community sewer system. Now he claims the developer should be punished by the PSC for providing utility services to non-members - - namely himself. In the interest of making Mr. Pugh happy, we acknowledge he did not sign a ratification agreement to the homeowner covenants, the developer is willing to disconnect Mr Pugh from the community sewer system, return the money Mr. Pugh spent for the sewer tap, and remove it. This is also not acceptable to Mr. Pugh. There are those who believe Mr. Pugh will be satisfied by nothing less than a public hanging of the developer. P.S.C. has become the rope.

I'm not going to address the other complaints because some lack standing, some present issues that are not within PSC jurisdiction, and most of the complaints parrot the issues covered above. Have there been mistakes and valid complaints in the past? You bet. Have they been satisfactorily addressed? Yes. Do we have a safe, efficient (and currently economical) water and sewer system? Absolutely.

It is my understanding the P.S.C. does not regulate water and sewer associations that are operated by a homeowners association..... provided the homeowner's association meets the following two P.S.C. guidelines: 1. Recorded covenants must provide "one vote per customer" as opposed to "one vote per lot"; and 2. Service cannot be provided to individuals who are NOT members of the homeowner association.

The One Vote Per Customer rule originated with the 1993 Rocky Ridge case (WD-93-307). The facts in the Rocky Ridge case are substantially distinguished from the facts of the present situation. Unlike Folsom Ridge, Rocky Ridge was not borne out of a new development project . When a development project is completed, it makes little difference whether votes are based on one vote per lot or one vote per customer. Results will be similar if not the same. Folsom Ridge development installed a community water and sewer system to service their brand new Big Island development project which has only scarcely begun . As a public service to the surrounding community, Folsom Ridge made the newly installed utilities available to pre-existing homeowners first. If developers followed the "one vote per customer" rule when establishing a not-for-profit property owner's utility association, they would NEVER offer utility services to pre-existing homes neighboring the development area. Doing so, would give control of a significant developer investment to **individuals who may not want to see nearby virgin**

land developed and could use their new found power to throw up obstacles to that development. In the current set of circumstances, adhering to the "one vote per customer" rule is detrimental to public policy and would have deprived pre-existing homes of updated community water and sewer services. Developers should not be required to adhere to the "one vote per customer" rule and should instead be permitted to utilize the "one vote per lot" rule .....at least until such time as the project is substantially completed.

P.S.C. guidelines prohibit homeowner associations, who provide utility services, from providing said services to non-members. That is a complaint of Mr. Pugh.....that the homeowner's association is providing service to him, a non-member. The Big Island Homeowners Association was established for the purpose of providing low cost non-profit utility services to **all** residents of Big Island. The association imposes no dues . Membership is free to everyone on Big Island. Perhaps the covenants should be amended to make that premise abundantly clear. Ms. Orler and Mr. Pugh were never turned away from any of the many homeowner meetings which they attended. The only benefit offered to members of the Big Island homeowners association is the option to become a customer of the utilities which the homeowner association leases from the developer. Mr. Pugh voluntarily availed himself of that option and is receiving sewer services. Anyone who connects to the utility system but refuses to voluntarily subject themselves to homeowner association membership, should be ordered to disconnect from the system.

In summarizing, let it be known that I am opposed to P.S.C. regulation of the Big Island water and sewer system. I believe the current homeowners association should be allowed to continue operating the water and sewer system under the lease agreement with Folsom Ridge. I believe the association should eliminate administrative "tap fees" for all unconnected homeowners. I believe homeowners who connect to the utility system should agree to be members of the association which governs it, or be disconnected. I believe the P.S.C. guidelines should be altered in "new development" situations to allow "one vote per lot" instead of "one vote per customer" as I believe that is in the public's best interest and especially the best interest of pre-existing homeowners. I believe complaints filed in bad faith and pursued in bad faith have the effect of making the Commission an accomplice in a personal vendetta. Such complaints should be dismissed, and those filing ordered to pay respondent's legal expenses.

Thank you,

Pamela Holstead.