

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

Cathy J. Orler, et al.	)	
	)	
Complainants,	)	
v.	)	Case No. WC-2006-0082, et al.
	)	
	)	
Folsom Ridge, LLC,	)	
	)	
and	)	
	)	
Big Island Homeowners	)	
Water and Sewer Association, Inc.,	)	
f/k/a Big Island Homeowners	)	
Association, Inc.	)	
	)	
Respondents.	)	

**RESPONDENTS' MOTION FOR AN ORDER SUSPENDING PROCEEDINGS**

Come now Folsom Ridge L.L.C. and Big Island Homeowners Water and Sewer Association, Inc., Respondents, by and through counsel, and respectfully request an order that stays the proceedings. In support, Respondents submit the following to the Commission:

1. The complainants in this case uniformly allege, as best as can be determined from their allegations (which Respondents still contend are indefinite and uncertain), that each Respondent or both are operating a public water and sewer utility without authorization from the Public Service Commission.<sup>1</sup> The form of relief the Commission may enter if it agrees with the complainants is an order requiring the Respondents to submit to the Commission's regulation.

2. During the local public hearing convened by the Commission in these cases on June 2, 2006, several of the complainants were allowed to testify. In general, their testimony did not dwell on why the Respondents should be regulated under the laws of the state or the rules of

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<sup>1</sup> Respondents have denied these allegations and continue to deny them.

the Commission, but rather the complainants offered their opinions, over objection, about the qualifications of the management of the companies, the manner of installation of the systems, their compliance with state or federal regulations and enforcement bodies, the adequacy of service, their relationship with customers and the financial ability of the companies to continue service.

3. Since the solitary issue that can be considered in these complaint cases is whether the company(ies) should be regulated, then whether or not: 1) the underground components of the water and wastewater sewer systems are in compliance with applicable engineering standards and environmental regulations; 2) the management of the companies is technically qualified to offer and provide service; 3) the companies are financially capable of offering and providing service; are far beside the point. The majority, if not all, of the issues being raised by the complainants in this case, as evidenced by their remarks on June 2, 2006, are issues that are appropriate only in the context of an *application for certificate of service authority to provide water or sewer service*.

4. Today, June 16, 2006, Big Island Water and Sewer Company, Inc. (BIWS) filed an application with the Commission for a certificate of public convenience and necessity to offer and provide ***regulated*** water and sewer service in and around Big Island at the Lake of the Ozarks. The application was assigned Case No. WA-2006-0480. As stated in that application, BIWS has entered agreements with the Respondents by which to acquire the assets used or useful in the provision of regulated water and sewer service on Big Island, all in response to the complaints filed in these consolidated cases. The filing of the application is also consistent with the Staff recommendation in this matter. If BIWS's application is approved, and the Respondents contend that it should be, the complaints for all practical purposes under law will be

moot, if not rendered null. Furthermore, the procedures under which the Commission will review BIWS's application will provide the better forum in which to address the complainants' issues about the water and sewer systems in place on Big Island.

5. Stay of this proceeding will also conserve the resources of the Commission, its staff, Office of Public Counsel and Respondents. As a result of the filing of BIWS's application, the contest over *whether* the respondents should be regulated can be paused, so that the parties can concentrate their resources on *how* BIWS, as a regulated company, will provide service to Big Island customers. Unless this proceeding is stayed, the Commission's attention and resources will be divided between two cases involving the same service territory and same customer base. In one case the Commission is being asked to determine whether a company should be regulated *over its objection*. In the other, the Commission is being asked to approve a company's *voluntary* request to be regulated for the same service and for the same service territory. The interests of judicial and administrative economy will be justly served by a stay.

6. The Commission has entered such stay orders in the past. In *Summerhaven Condominium Owners Association v. Waterserv, Inc. et al*, Case No. WC-99-34 the complainants filed a complaint alleging that the respondents were providing water and sewer service without proper authority from the Commission. The complainants prayed that the respondents acquire the appropriate certificate to provide service. During the course of the complaint, the respondents agreed to sell, and Ozark Shores Water Company, agreed to buy their water and sewer assets. Ozark Shores in turn filed an application for a certificate to serve the new area. See, Case No. WA-99-99. On November 19, 1998, the Commission found that the proceedings in the complaint case should be stayed and "all action suspended pending resolution

of Case No. WA-99-99. The pending case, if approved, may cause the [complaint] case to be a nullity.” *Summerhaven*, Commission Order of November 19<sup>th</sup>, 1998, page 2.

WHEREFORE, Respondents respectfully request the Commission to stay these complaint proceedings and suspend all motions and other actions herein pending the outcome of BISW’s application in Case No. WA-2006-0480.

Respectfully submitted,

/s/ Mark W. Comley

Mark W. Comley #28847  
Newman, Comley & Ruth P.C.  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, MO 65102  
(573) 634-2266  
(573) 636-3306 FAX

Charles E. McElyea #22118  
Phillips, McElyea, Carpenter & Welch, PC  
85 Court Circle  
P.O. Box 559  
Camdenton, MO 65020  
(573) 346-7231  
(573) 346-4411 FAX

Attorneys for Folsom Ridge, L.L.C, and Big Island  
Homeowners Water and Sewer Association, Inc.,  
f/k/a Big Island Homeowners 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 16th day of June, 2006, to General Counsel’s Office at [gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov); and Office of Public Counsel at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov) and via U.S. Mail, postage prepaid, to:

Cathy Orler, 3252 Big Island Drive, Roach, MO 65787,  
Cindy Fortney, 3298 Big Island Drive, Roach, MO 65787,  
Dean Leon Fortney, P.O. Box 1017, Louisburg, KS 66053,

Judy Kenter, 1794 Big Island Drive, Roach, MO 65787,  
Benjamin D. Pugh, 1780 Big Island Drive, Roach, MO 65787,  
Joseph J. Schrader, 1105 Yorktown Pl., DeLand, FL 32720,  
Stan Temares, 371 Andrews Trail Court, St. Peters, MO 63376,  
Ben F. Weir, 3515 SW Meyer Blvd., Blue Springs, MO 64015,

**/s/ Mark W. Comley**  
Mark W. Comley