

**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)	Case No. WA-2006-0480, et al.
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 in Camden County, 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.)	

MOTION TO QUASH SUBPEONAS

COME NOW Big Island Water and Sewer Company, Inc. ("Big Island"), Folsom Ridge LLC and Big Island Homeowners Water & Sewer Association, Inc. (the Association) and pursuant to 4 CSR 240-2.100(3) move the Commission for an order quashing certain Subpoenas for Witness described below. In support thereof, movants state as follows:

1. On June 16, 2006, Big Island filed an application for a certificate of convenience and necessity to operate a water and sewer system on Big Island, Lake of the Ozarks, located in Camden County, Missouri. (Case No. WA-2006-0484) Cathy J. Orler filed an Application to

Intervene in that matter and it was granted by the Commission on or around July 20, 2006.

2. Ms. Orler is also a party complainant in Case No. WC-2006-0082.

3. On January 24, 2007, during the “off the record” portion of the prehearing scheduled by the Commission in Case No. WC-2006-0082, Ms. Orler handed 1) Charles E. McElyea, an attorney of record for the movants; 2) Don Bracken; 3) Pam Holstead; and 4) Phil Hiley, each a Subpoena For Witness issued by the Secretary of the Commission directing them to appear before the Commission to testify at a hearing on “the 5th day of February 5, 2007.” The subpoena further provided that the witnesses were “to testify at a hearing in the matter of the *Application of Big Island Water & Sewer Company, Inc., Case No. WC-2006-0082.*” [emphasis is added] Copies of the subpoenas handed to the individuals named above are attached as Exhibits A – D and are incorporated by reference as if fully set forth herein.

4. The undersigned does not represent Mr. Bracken, Ms. Holstead or Mr. Hiley but the subpoenas potentially affect preparation for hearing for all parties and in that respect, movants bring them to the attention of the Commission.

5. The subpoenas should be quashed. First, it appears that they mistakenly refer to a hearing in WC-2006-0082. The date of the hearing in the subpoena was that scheduled in WA-2006-0480, which has been dismissed and all hearings canceled. At least the subpoenas are no longer enforceable since no hearing will be conducted in Case No. WA-2006-0480 as originally planned. If Ms. Orler meant for the subpoenas to refer to Case No. WC-2006-0082, the date of the hearing was certainly incorrect and in fact, at the time she handed the subpoenas to these individuals, no new procedural schedule had been set in Case No. WC-2006-0082. Other reasons exist to quash the subpoenas however.

6. Second, they were improperly served. Pursuant to § 386.440.1, RSMo,

All subpoenas shall be signed and issued by a commissioner or by the secretary of the commission, and shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record or by any person of full age designated for that purpose by the commission or by a commissioner. (emphasis added).

7. Missouri Rule of Civil Procedure 54.13(a) provides that “[s]ervice of process within the state, except as otherwise provided by law, shall be made by the sheriff or a person over the age of 18 years who is not a party to the action.” (emphasis added).

8. In the instant case, Ms. Orlor is a party to both proceedings captioned above and has not been designated by the Commission or a Commissioner to serve process. She was not authorized to serve the subpoenas under Missouri law and the rules of Missouri civil procedure.

9. Therefore, for these reasons¹ the attempted service of the aforementioned subpoenas is invalid and the subpoenas should be quashed by the Commission.

WHEREFORE, Big Island Water and Sewer Company, Inc., Folsom Ridge LLC and Big Island Homeowners Water & Sewer Association, Inc. move the Public Service Commission to quash the above-mentioned Subpoenas For Witness and to grant such further relief as is just and proper.

¹ The extent to which an attorney of record is amenable to process and the application of witness fees to delivery of subpoenas will not be addressed in this motion, but movants contend that the subpoenas are also subject to attack for reasons related to those topics.

Respectfully submitted

/s/ Mark W. Comley

Mark W. Comley, Mo. Bar #28847
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537
(573) 634-2266 (voice)
(573) 636-3306 (facsimile)
comleym@ncrpc.com

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 BIG ISLAND WATER AND
SEWER COMPANY, 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 1st day of February, 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:

Cathy Orler, 3252 Big Island Drive, Roach, MO 65787,
Cindy Fortney, 3298 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, 1836 Big Island Dr., Roach, MO 65787,
Ben F. Weir, 3515 SW Meyer Blvd., Blue Springs, MO 64015,
Elaine H. and William T. Foley, II, 15360 Kansas Ave, Bonner Springs, KS 66012,
Don Deckard, 2218 Big Island Dr., Roach, MO 65787,
Bernard J. Beaven, 13900 E 217, Peculiar, MO 64078,
Jerry Steinhour, Lot 57, P.O. Box 737, Seneca, IL 61360,
Joseph Geary Mahr, 5712 Dearborn Street, Mission, KS 66202,

Arthur W. Nelson, 6504 Melody Lane, Parkville, MO 64152,
Eugene Prather, 1604 Big Island Dr., Roach, MO 65787,
Donald J. and Frances K. Weast, 5291 Kerth Road, Mehlville, MO 63128,
Stephen D. Kleppe, 8210 E. Tether Trail, Scottsdale, AZ 85255,
Dean Leon Fortney, P.O. Box 1017, Louisburg, KS 66053,
Judy Kenter, 1794 Big Island Drive, Roach, MO 65787.

/s/ Mark W. Comley
Mark W. Comley