

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

Duane Stoyer)	
)	
Complainants,)	
v.)	Case No. WC-2006-0082, et al.
)	
Folsom Ridge, LLC,)	(Case No. WC-2006-0129)
)	
and)	
)	
Big Island Homeowners)	
Water and Sewer Association, Inc.,)	
f/k/a Big Island Homeowners)	
Association, Inc.)	
)	
Respondents.)	

MOTION TO DISMISS COMPLAINT

Come now Folsom Ridge, L.L.C. and Big Island Homeowner's Water and Sewer Association, Inc., by and through counsel, and move to dismiss Mr. Duane Stoyer's complaint for the reasons set forth below:

1. At the local public hearing held in Camdenton, Missouri on June 2, 2006, several complainants advised the Commission, and the regulatory law judge confirmed, that Mr. Stoyer is now deceased.

2. "The capacity to sue, be sued, or be a *party* appellant or respondent, reposes only in persons in being. *Farrar v. Moore*, 416 S.W.2d 711, 712[1] (Mo.App.1967)." [Emphasis original] *Earls v. Farmers Production Credit Ass'n.*, 763 S.W.2d 694, 695 (Mo.App. S.D. 1988).

3. Additionally, a case is rendered moot and should be dismissed when an event occurs that alters the position of the parties and any judgment would be a hypothetical opinion. *Shaw v. Ferguson Medical Group, L.P.* 121 S.W.3d 557, 558 (Mo.App. E.D.,2003).

4. Mr. Stoyer filed his complaint *pro se*. There is currently no lawful representative to appear on his behalf and there has been no suggestion that one will appear for his estate. This pleading will be sent to his last known address to comply with the Commission's filing procedures but it is unknown if it will ever be read by one involved in disposition of his final affairs.

5. Due to his unfortunate death, Mr. Stoyer lacks the capacity to sue in this Commission and otherwise the issues raised in his complaint, as they apply to him, are now moot.

6. As a matter of fairness to the Respondents, the Commission should not expect them to incur time and expense to defend against a complaint filed by a person who, now silenced by death, will never appear to support it and cannot be cross examined about his allegations.

WHEREFORE, Respondents respectfully request that Mr. Stoyer's complaint be dismissed.

Respectfully submitted,

/s/ Mark W. Comley

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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 9th day of June, 2006, 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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