

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

Cathy J. Orler,	)	
	)	
Complainant,	)	
v.	)	Case No. WC-2006-0082, et al.
	)	
Folsom Ridge, LLC,	)	
	)	
Respondent.	)	

**RESPONDENT'S SUGGESTIONS IN OPPOSITION  
TO MS. ORLER'S MOTION TO COMPEL**

Pursuant to the Commission's order of December 1, 2005, Folsom Ridge L.L.C. (Folsom Ridge) submits these opposing suggestions to Cathy Orler's recent motion. Cathy Orler has requested an order from the Commission compelling Folsom Ridge to produce the following documents:

1. A membership listing of the Big Island Homeowners Association and a complete listing of all individuals being billed by the Big Island Homeowner's Association.
2. A signed and ratified copy of the "Amended and Restated Declaration of Covenants and Conditions" and a signed and ratified copy of the "Amended and Restated By-Laws of Big Island Homeowners Association, Inc."

Ms. Orler's data requests do not refute that Big Island Homeowner's Association, Inc. is a corporate entity, and in law is a separate legal entity. It is not a party to this action as best as can be determined from the complaint and the notice of complaint that was issued by the Commission to Folsom Ridge. The undersigned represents Folsom Ridge and not Big Island Homeowner's Association, Inc, its officers, directors or members.

Ms. Orler has asked for a membership listing for, and a list of all individuals being billed by, Big Island Homeowner's Association. Folsom Ridge has no duty or

obligation to maintain a membership listing or billing information for a separate corporation. Folsom Ridge has no care, custody or control of documents prepared by or for Big Island Homeowner's Association, Inc. in connection with its membership lists or customer lists. The documents described by Ms. Orler in her data requests, if they exist, are in the care, custody and control of the custodian of records of Big Island Homeowner's Association, Inc., a non party to this action.

The discovery rules of the Commission provide that discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. 4 CSR 240-2.090 (1). Data requests are an optional form of discovery between parties to the case, but their use must be guided by the general rules of discovery. The data requests Ms. Orler served on Folsom Ridge are in substance requests for production of documents. Under Rule 58.01(a) of the Missouri Rules of Civil Procedure, a party may serve a request on another party to produce documents within the scope of permitted discovery "which are in the possession, custody or control of the party upon whom the request is served[.]"

In her motion to compel, Ms. Orler refers to letters signed by Mr. Reggie Golden, a member of Folsom Ridge. Mr. Golden holds offices in other corporations and companies. No member of Folsom Ridge has been named a party to this suit.

The documents requested by Ms. Orler from Folsom Ridge are, if they exist, in the custody, control and possession of another entity that is not a party to this case. Ms. Orler cannot rely on discovery provisions applicable to parties to the case in acquiring the documents she requests. A data request cannot compel a nonparty to produce documents or records. It is no substitute for a valid subpoena.

On the basis of the above and foregoing, Folsom Ridge prays the Commission deny Ms. Orler's motion to compel.

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 6<sup>th</sup> day of December, 2005, 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:

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/s/ Mark W. Comley