

**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.)	

**RESPONSE OF FOLSOM RIDGE LLC
AND BIG ISLAND HOMEOWNERS WATER AND SEWER
ASSOCIATION TO COMPLAINANTS' REQUEST FOR SANCTIONS
AND PROPOSAL**

Come now Folsom Ridge LLC (Folsom Ridge) and Big Island Homeowners Water and Sewer Association, Inc. (the Association) (collectively the "Respondents") and for their response to the Complainants' Request to the Commission to Impose Sanctions with Penalties and Fines Against the Respondents (the Motion for Sanctions) filed February 20, 2007 submit the following to the Commission:

1. On February 2, 2007, the Complainants filed a document in this case under a heading using the words "full disclosure" and it concerned a series of data requests served by Ms. Orler¹ that the Respondents had objected to in this matter in the summer of 2006. Nowhere

¹ The Complainants as a group have no interest in whether a data request served by Ms. Orler has been lawfully objected to by the Respondents. The only party that has a required interest to bring a motion to compel under the Commission rules is Ms. Orler. Technically, complainants other than Ms. Orler should be dropped from the motion

in the body of the document did Complainants refer to any rule of this Commission which authorized its filing.

2. On the same date, Ms. Orler submitted the same three data requests to the Respondents, and on February 9, 2007, the Respondents timely asserted the same responses and objections. Any duty to respond to Ms. Orler's data requests has been fulfilled or excused by reason of timely objection to the same.

A. The Motion for Sanctions does not comply with Commission Rules.

3. The sufficiency of Respondents' answer to Data Request 1 and their objections to Data Requests 2 and 3 have never been ruled upon by the Commission. The Motion for Sanctions claims that the Commission has entered two orders compelling responses to data requests. The orders were not specifically identified.² In truth, the Commission has **never** entered an order overruling Respondents' objections and compelling answers to the data requests referred to in the Motion for Sanctions. Ms. Orler has never filed a motion to compel related to the responses and objections raised by Respondents to her data requests.

4. Commission rule 4 CSR 240-2.090 (8) provides:

(8) Except when authorized by an order of the commission, the commission will not entertain any discovery motions, until the following requirements have been satisfied:

(A) Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely wiring a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion; and

(B) If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the commission for an immediate telephone conference with the presiding officer and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.

and are not entitled to any relief. They did not submit the data requests. Respondents have tailored this response as if it were Ms. Orler seeking the relief.

² A succinct history of the discovery motions and orders disposed of in this case is found in the Commission's order of June 15, 2006. Respondents have fully complied with each of those orders.

5. Complainants' motion is unquestionably a motion pertaining to discovery. Complainants' motion does not set out the steps Ms. Orler has taken in good faith to resolve the objections to the data requests with the undersigned counsel, nor that she has engaged in a telephone conference with the regulatory law judge in advance of the filing of this discovery motion, all of which is required by 4 CSR 240-2.090(8)(A) and (B) and which has not been waived. Ms. Orler has not in good faith conferred or attempted to confer with undersigned counsel regarding the objections, and has not tried to arrange a conference call with the presiding judge of this case. The absence of these ingredients is fatal to the motion. Ms. Orler cannot claim that she is unaware of these discovery motion rules. Yesterday and today, because of objections asserted to data requests served by Respondents on Ms. Orler, the undersigned has been arranging a telephone conference among the parties with the presiding law judge assigned to address those objections pursuant to Commission rule.

6. Complainants have filed the discovery motion applicable to Ms. Orler's data requests in violation of the rules of the Commission and it should be overruled. The Commission rules advise that the motion cannot be entertained. There are other reasons which support this result.

B. The Motion is otherwise without merit.

7. Given the present record of the case, the Motion for Sanctions attempts to sanction the Respondents for lawfully objecting to discovery requests. Respondents are not obligated to provide information they do not have; provide information in a particular form or shape that is different from the way in which it is kept by the Respondents; answer burdensome or oppressive data requests; or provide information that is a public document equally available

to Ms. Orler or the complainants. Asserting valid objections to discovery devices is not, and will never be, a ground on which sanctions can be imposed.

8. The motion does not express how Ms. Orler or the complainants have been prejudiced in the preparation of their own case by the response given to Data Request 1 or by lack of the information to which objections have been asserted.

9. The Motion for Sanctions seeks a penalty in a sum exceeding \$750,000. The rules of discovery do not provide for penalties. Attorneys fees are provided in the event of disobedience to discovery requests as well as matters related to the efficacy of defenses or initial pleadings. See Rule 61.01 incorporated by the Commission in 4 CSR 240-2.090(1). The Complainants are not represented by counsel and have no attorney expenses, at least up to the present. Sanctions are only available for disobedience to the discovery rules. Complainants seek sanctions against the Respondents for following them.

10. Respondents suggest that the Motion for Sanctions has not been filed for purposes of discovering matters that are relevant to this proceeding but rather out of spite and for purposes of annoyance. The numerous times the Complainants or Ms. Orler have accused the Respondents of failing to respond to these data requests in filings with the Commission that have no basis or origin in its rules support this conclusion. It is fair and proper for Respondents to comply with the discovery rules of this Commission and it is no less fair and right for the Complainants to do the same, and bear the consequences of offending them. The Motion for Sanctions should be overruled.

C. A Proposal

11. The hearing in this matter is a week away leaving little time for the Commission and the parties to dispose of these discovery difficulties, let alone meet the remaining procedural

deadlines. In the interest of time, expense and convenience, Respondents have attached to this response a copy of the spreadsheets they produced for Ms. Orler in response to her Data Request No. 1 when it was first submitted as well as a supplementary spreadsheet later produced. The Association does not keep membership records in the form that Ms. Orler has requested and it has provided her information as best as its form of recording now permits in response to that data request. Again, Respondents believe that the information provided met the substance of the request and complies with the Commission's rules. However, to avoid further cost and expense on this matter, Respondents are willing to consider a stipulation with respect to the facts Ms. Orler seeks to establish through these documents, subject to any and all relevancy or materiality objections available at hearing.

12. Regarding Data Request No. 2, Ms. Orler requested signed ratification documents pertaining to "Covenants and Conditions" and their amendments that affect property on Big Island. Signed copies of those documents are not regularly maintained by the Association, but those are available from the Camden County Recorder of Deeds offices in exchange for payment of required fees. There are still questions of relevancy involved in this request which have not been raised in the objection, but as above, to avoid further cost and expense on this matter, Respondents are willing to consider a stipulation with respect to the facts Ms. Orler seeks to establish through these documents, subject to any and all relevancy or materiality objections available at hearing.

13. In Data Request No. 3, Ms. Orler has requested bills, billing statements, invoices and other communications regarding fees, dues, expenses and rates charged by the Association for water and sewer services rendered from January 2001 to the date of her request. This request involves production of an estimated 2500 documents. To meet this request the Association will

need to dedicate an employee to 1) retrieve these records manually and electronically (to the extent that have been recorded electronically); 2) assemble the records; 3) mark any communications that may have confidential or privileged communication for review by counsel; and 4) prepare them for shipment from their archive point in Colorado. Respondents have rightly objected to this on grounds of its undue burden and expense. Ms. Orler has not offered to advance Respondents' costs in meeting this request. There is a very real question respecting why this voluminous information is important to the complaints. The burden on the record at hearing should also be considered. Even so, to avoid the extraordinary cost and expense associated with this matter, Respondents are willing to consider a stipulation with respect to the facts Ms. Orler seeks to establish through these documents, subject to any and all relevancy or materiality objections available at hearing.

D. Conclusion

Respondents have complied with the rules of discovery and the Complainants cite no order which Respondents have disobeyed. Objecting to a party's discovery requests does not give grounds for sanctions under the Commission's rules. Complainants' Motion for Sanctions does not comply with the Commission's rules on discovery motions. The Motion for Sanctions is meritless and should be overruled.

Irrespective of the lack of merit to the Motion for Sanctions, Respondents will consider entering stipulations of fact to avoid further cost and expense in connection with Ms. Orler's data requests.

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 21st 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 Orlor, 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,
and
Pamela Holstead, 3458 Big Island Dr., Roach, MO 65787,
William T. Foley, II, 15360 Kansas Ave., Bonner Springs, KS 66012,
Arthur W. Nelson, 2288 Big Island Dr., Roach, MO 65787,
Sherrie Fields, 3286 Big Island Dr., Roach, MO 65787,
Tom and Sally Thorpe, 3238 Big Island Dr., Roach, MO 65787,
Bernadette Sears, Portage Park 3, Lot 10, Big Island, Roach, MO 65787,

Geary and Mary Mahr, 1886 Big Island Dr., Roach, MO 65787,
Donald J. Weast, 3176 Big Island Dr., Roach, MO 65787,
Fran Weast, 3176 Big Island Dr., Roach, MO 65787.

/s/ Mark W. Comley
Mark W. Comley