

**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 MS. ORLER’S MOTIONS TO JOIN THE MISSOURI
DEPARTMENT OF NATURAL RESOURCES AND TO AMEND THE
PROCEDURAL SCHEDULE**

Come now Respondents and for their response to Ms. Orler’s separate motions to add the Missouri Department of Natural Resources as a party and to amend the procedural schedule submit the following to the Commission:

Motion to Add DNR as a Party

1. Respondents oppose Ms. Orler’s motion to join the Missouri Department of Natural Resources as a party to this action. The Department is subject to validly served process and was and is being deposed in this case. Ms. Orler’s motion to join the Department should be denied.

Motion to Amend Procedural Schedule

2. Ms. Orlor has asked that the procedural order be amended to allow live testimony at hearing in this matter. The hearing in this case will be conducted simultaneously with the hearing in Case No. WO-2007-0277. The Commission has acknowledged that the time to hearing is short and the parties will be compressing time in preparation for that hearing.

3. Respondents oppose an amendment to the procedural order that would allow live testimony in this matter.

4. First, having live testimony as part of the complaint proceeding and written testimony as part of the asset transfer application in Case No. WO-2007-0277 will hamper the progress of the hearing and confuse the process. For consistency in the proceedings, both should require written testimony. Written testimony has already been filed in Case No. WO-2007-0227.

5. Second, there are eight complainants in this matter and all are pro se parties. The filed complaints have a wide assortment of issues many of which do not involve the jurisdiction of the Commission. In an effort to discover the facts and circumstances on which each complaint was based, the qualifications of each complainant, and otherwise to determine the issues that could be heard by this Commission, the Respondents, in compliance with all applicable discovery rules and notice requirements, scheduled the depositions of the complainants for June 21-22, 2006 in Camdenton, Missouri. On June 20, 2006, without any advance notice to the undersigned, the complainants filed an objection to the scheduled depositions for the reason **that they were not represented by counsel**. Respondents moved for sanctions because of the frivolity of this objection on June 20, 2006 when efforts to salvage the dates of the depositions became futile. The motion for sanctions still pends before the Commission.

6. Imposing the written testimony rule in Commission cases forces a party to select which witnesses will testify and on what issues, and lends more precise definition to the issues and to a party's presentation at hearing. Unless the written testimony rule is applied in this case, Respondents are left to guess who among the complainants, if not all, will be testifying and about what subject. To prepare for such a hearing, the depositions of all the complainants will be essential in determining the nature of their testimony at hearing and also the extent of other discoverable matter within their knowledge.

7. Written testimony is a staple of this Commission for, among other reasons, its usefulness as a substitute for discovery deposition. Depositions are expensive and time consuming. There is little time to prepare for hearing in this matter and accordingly little time for the scheduling of eight depositions. Had depositions of the complainants already been taken as earlier scheduled, the importance of written testimony would not be as critical, at least in the captioned case.

8. However, fourteen individuals have applied to intervene in Case No. WO-2007-0277. Some of the complainants have applied to intervene. Many individuals are new to the several proceedings that have involved Big Island. All the individual applicants for intervention are pro se. The applications to intervene have been submitted on a form that does not comply with the Commission's rules.¹ Contact information is incomplete. There have been times when the mailing address for interveners in these matters has been incorrect. Engaging in basic data requests may prove to be very difficult. Respondents expect the interveners in Case No. WO-2007-0277 to have the same reluctance to sit for deposition as the complainants in this case. If

¹ For example, none of the applications to intervene sets forth the telephone number of the intervener as required by 4 CSR 240-2.060(1)(I). Without telephone information, communication with the interveners will be impaired.

written testimony is not required, discerning the basis of their objections to the application will be a complicated process unduly burdening the parties and the Commission.

9. The time restraints in these matters and the inexperience of the individual applicants in Case No. WO-2007-0277, if they are allowed to intervene, will adversely and unfairly affect Respondents' rights to discovery and their ability to prepare for hearing. The written testimony rule in both cases will truncate the need for extensive discovery measures, will reduce if not eliminate issues about deposition scheduling, minimize time and expense, and help in the identification and efficient presentation of issues to the Commission.²

10. The complainants were interveners in Case No. WA-2006-0480 and filed written testimony in obedience to the Commission's procedural order in that case. Preparing written testimony is not foreign to any of them.

WHEREFORE, Respondents respectfully request that the Commission deny Ms. Orler's Motion to Add the Department of Natural Resources as a Party and her Motion to Amend Procedural Schedule to Reflect Status Prior to Stay.

Respectfully submitted,

/s/ Mark W. Comley

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² Respondents assume that this was the reason the written testimony rule was inserted in the Commission's recent procedural order in the first place.

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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 6th 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:

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