

**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 TO MS. ORLER'S
OBJECTION TO REQUEST FOR DEPOSITIONS
AND MOTION FOR SANCTIONS**

Come now the Respondents, by and through counsel, and submit the following to the Commission:

1. On June 9, 2006, Respondents served notices of deposition upon all the complainants and scheduled the deposition of each complainant, save Mr. Stoyer, over two days starting in the afternoon of June 21, and the morning of June 22, 2006 at Mr. McElyea's offices in Camdenton. According to the objection filed by Ms. Orler, and which ostensibly is joined by other complainants, she received the notice (or notices) on June 14, 2006, seven days before her own deposition was scheduled. Under Rule 57.03(b) (seven days notice is enough) more than adequate notice of the depositions was given each complainant.

2. On June 20, 2006, at about 1:50 p.m. Ms. Orlor filed “Complainants’ Objection to Respondents’ Request for Depositions.”¹ As best as counsel can discern from the filing, complainants object to the taking of their depositions solely on the ground that they are not represented by counsel.

3. The **“objection” is frivolous.** The complainants have a choice about representation and they have chosen none. They are not exempt from the same standard expected of attorneys however. Furthermore, they are not exempt from the discovery devices available in this Commission, one of which is deposition upon oral examination. Since no written testimony is to be filed in this case, the depositions of these parties is even more essential in determining the nature of their testimony at hearing and also the extent of other discoverable matter within their knowledge. The depositions of the complainants are fundamental to Respondents’ preparation for hearing.

4. **The “objection” is late** and prejudicially so. Because of the late hour at which it was filed, the Commission should presume that it was filed with the intention to delay the Respondents in their preparation for hearing. The complainants did not give either of the undersigned counsel any advance notice of this objection. At mid-morning today, undersigned counsel called Ms. Orlor to discuss final arrangements for the start of depositions tomorrow. It was then that Ms. Orlor advised that an objection might be filed. Requests directed to Ms. Orlor to fax the objection to Newman Comley and Ruth P.C. before its filing were ignored. The late hour at which it was filed made it virtually impossible for counsel to arrange for an emergency conference with Judge Woodruff by telephone to hear the objection and preserve tomorrow’s

¹ The title erroneously presumes that parties “request” depositions in contested proceedings and by not further addressing the title of the filed document, Respondents do not mean to agree with it.

schedule for complainants' depositions. Undersigned counsel tried to schedule the call but Ms. Orler could not join such a call even if it were scheduled for 5:30 p.m.

5. Moreover, the “objection” has unavoidably caused cancellation of the depositions, at least for June 21, 2006, and rescheduling of the depositions within the period of time remaining before hearing may not be possible without affecting Respondents’ ability to prepare adequately for hearing.

6. Respondents are entitled to obtain discovery from the complainants in the manner provided by the rules of this Commission. The complainants have engaged, and continue to engage, in a pattern of conduct designed to interfere with the Respondents’ ability to lawfully obtain discovery. Hearing is scheduled to begin July 17, 2006. The complainants have not yet answered Respondents’ first set of data requests. They have refused to sit for their depositions.

7. Under its rules, the Commission may impose sanctions upon the complainants for failure to attend their own depositions. 4 CSR 240-2.090(1). The frivolity of the objection raised by the complainants should be regarded by the Commission as no objection at all. The Commission should sanction the complainants in any or all of the following respects:

- a. Impose costs upon the complainants for legal fees incurred to respond to the objection and to reschedule their depositions;
- b. Strike portions, if not all, of their complaints
- c. Alternatively, cancel the scheduled hearing and continue this matter so that 1) depositions can be rescheduled in a convenient time and place without impeding Respondents’ ability to prepare adequately for hearing; or 2) a special master can be appointed to preside over the depositions of the complainants; and/or 3) complainant’s testimony can be converted to written form, pursuant to

supplemental procedural order and rules of the Commission, without prejudice to Respondents' rights to depose the complainants on that written testimony.

WHEREFORE, Respondents pray the Commission reject the objection filed by the complainants to the taking of their depositions as frivolous and further impose sanctions as set forth above, together with such other relief the Commission deems fit and just.

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 20th 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, on June 21, 2006, to:

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