

**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.)	

**RESPONDENTS' SUGGESTIONS IN OPPOSITION TO
LIFTING THE STAY OF PROCEEDINGS AND TO ENTRY OF ANY
EXTRAORDINARY ORDERS OR FINDINGS**

Come now Folsom Ridge L.L.C. (Folsom) and Big Island Homeowners Water and Sewer Association, Inc. (the Association), Respondents, by and through counsel, and for these opposing suggestions state the following to the Commission:

1. On December 26, 2007, the several complainants in this matter filed, in a purported joint pleading, a request that the Commission remove the suspension of proceedings ordered by the Commission on June 27, 2006 and issue a determination, apparently without hearing, that the "utility" is subject to Commission jurisdiction. They also asked the Commission to issue an order which would "immediately halt the transfer of the utility assets." Complainants' requests for relief have no merit and should be denied.

2. Respondents do confirm that a group of residents on Big Island have organized a nonprofit sewer company under and pursuant to the provisions of Sections 393.825 through

393.861 RSMo 2000 and a nonprofit water company under and pursuant to the provisions of Sections 393.900 through 393.951 RSMo 2000. The nonprofit companies are named Big Island Sewer Company and Big Island Water Company and were incorporated on October 10, 2006 (the Nonprofit Companies).

3. Respondents have negotiated with the Nonprofit Companies toward a transfer of the assets used or useful in connection with the provision of water and sewer service on Big Island. A final form of a transfer agreement will soon be ready for execution. Moreover, a closing on the transaction with the Nonprofit Companies could reasonably occur in the next 40 days.

4. As the Commission is aware, under the provisions of sections 393.847, 393.933, RSMo 2000, the Commission lacks jurisdiction over the construction, maintenance, or operation of the facilities owned by these companies, or their service, rates, accounting or management.

5. The fact that the Respondents' water and sewer assets may be sold to the Nonprofit Companies is not a justification for resuming a procedural schedule in this case but rather is yet another justification for keeping the stay in effect.

6. On February 9, 2006, pursuant to Commission order, the Staff filed a report of its investigation in this case. Respondents do not agree with Staff's belief that the Association's provision of water and sewer service on Big Island triggers this Commission's jurisdiction. Nonetheless, the Respondents note these conclusions made in the Staff's report:

CONCLUSIONS

The Staff believes that either Folsom needs to file an application for a CCN to provide water and sewer service under the Commission's jurisdiction, **or that a group of customers needs to create appropriate 393 nonprofit water and sewer utility entities so that the utility systems may be operated in this manner.** Although 393 nonprofit utilities are not regulated by the Commission, the Staff would be willing to assist the customers and Folsom regarding capital

structure, rates and charges, and rules for pipeline extensions and system expansion for future development, as well as assisting as requested in the development of the 393 nonprofit utilities. [emphasis added]

7. On June 16, 2006, Big Island Water & Sewer Company, Inc., a company affiliated with Folsom, did file an application for a certificate of convenience and necessity to operate the water and sewer system currently being operated by Folsom and the Association. That application is currently pending in Case No. WA-2006-0480. The application was filed in response to the complaints in this case. At the time of the filing of the application, the Nonprofit Companies had not been created by the citizens group. The transfer of assets that complainants seek to interrupt is consonant with the Staff's alternative recommendation in this case; is lawful, and when the transaction is closed should render the complaints moot.

8. As mentioned above, an application still pends in Case No. WA-2006-0480. The Commission has recently reinstituted filing deadlines for the parties in that case and hearing is still scheduled in February. Renewing procedural deadlines in this case would mean duplication of effort and expenditures of time and money that the Commission's stay was justly designed to avoid. Moreover, the closing on the asset transfer will render the application case (Case No. WA-2006-0480) obsolete and subject to voluntary dismissal. Dismissal of the application will eliminate the need for the hearing in February and the costs associated therewith.

9. The complainants allege in paragraph 7 of their recent filing that Respondents are preparing to transfer assets owned by the complainants. They identify as their "utility assets" rights they purchased to connect to the systems which rights apparently have not yet been exercised. These are rightly classified as "obligations" or "contingent liabilities" of the Respondents, or their successors, not assets. Complainants are not co-owners of the assets used by the Association in the provision of water and sewer service on Big Island. Respondents claim

no ownership interest in the facilities, if any, which complainants have installed on their premises to connect to the water or sewer system. The Commission has no power or authority to declare or rule upon property rights. Even so, no property of the complainants is involved in the potential sale of assets under consideration by Respondents and the Nonprofit Companies.

10. The complainants' request for a Commission order enjoining the transfer of assets is similar to a request they made as interveners in Case No WA-2006-0480 on October 5, 2006. Enjoining the exchange of property is a form of injunction which the Commission is powerless to enter. *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 75 - 76 (Mo.banc 1982)(the Public Service Commission has no power to declare any principle of law or equity). Only the courts can issue injunctions. On October 24, 2006, the Commission denied the request to freeze the assets. Nothing compels a different result in this case.

11. Neither respondent in this matter is a public utility or subject to the Commission's jurisdiction. Clearly, there is no authority for the Commission to enter the relief sought by the complainants.

CONCLUSION

The circumstances giving rise to the Commission's order of June 27, 2006 suspending the procedural schedule in this case have not changed. That the Respondents are moving toward the implementation of one of Staff's recommended means of solving controversy over the present means of providing water and sewer service on Big Island does not constitute cause to lift the Commission's stay. In fact, it is another factor supporting that stay. Complainants' Request to Remove the Suspension of the Proceedings in The Case, and Simutaneously [sic] Issue a Determination and Ruling That This Utility Is Subject To The Jurisdiction Of The Missouri Public Service Commission should be denied.

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 5th day of January, 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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