

November 3, 2005

The Honorable Colleen M. Dale
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

FILED

NOV 07 2005

Missouri Public
Service Commission

Re: Case No. WC-2006-0107

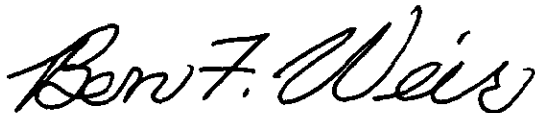
Dear Judge Dale,

Please find enclosed for filing in the referenced matter the original and five copies of a Response To Motion To Dismiss Complaint.

Please bring this filing to the attention of the appropriate Commission personnel.

Contact me if you have any questions regarding this filing. Thank you.

Respectfully submitted,



Ben F. Weir
3515 SW Meyer Blvd.
Blue Springs, MO 64015

Cc: Office of Public Counsel
General Counsel's Office
Mark W. Comley

FILED

NOV 07 2005

BEFORE THE PUBLIC SERVICE COMMISSION OF THE
STATE OF MISSOURI

Missouri Public
Service Commission

Ben F. Weir,

Complainant

Case No. WC-2006-0107

Vs.

Folsom Ridge, LLC (Owning and Controlling the
Big Island Homeowners Association)

Respondent

RESPONSE TO MOTION TO DISMISS COMPLAINT

I, Ben Weir, the complainant in case No. WC-2006-0107, respectfully request that the Commission not dismiss my case, on grounds that my complaint did state a claim upon which relief may be granted by the PSC, subject to the regulation of the PSC under the jurisdiction thereof, against Folsom Ridge, LLC (Owning and Controlling the Big Island Homeowners Association).

I would like to restate that claim as a part of this response to make absolutely certain that it is definite and without question: that "Folsom Ridge, LLC (Owning and Controlling the Big Island Homeowners Association) is "acting" as a public utility by providing and "controlling" service to property owners and homeowners on Big Island, Camden County, Roach, MO 65787.

However, if the definitiveness of my claim was not made absolutely clear in my Formal Complaint, filed September 9, 2005, which was supported by numerous documents provided as exhibits No. 1 through No. 8 (beginning November 19, 1998 through June 28, 2005), I would like another opportunity in this motion to the Commission to further clarify, support and prove my formal complaint, and why it should be heard in a full, impartial and open public hearing before the Commission so that a final determination could be made as to the merits of my case as well as many others which also have been filed against Folsom Ridge, LLC (Owning and Controlling the Big Island Homeowners Association).

SUGGESTIONS IN SUPPORT

According to Mr. Comley, "There are few paragraph numbers and no page numbers and there is difficulty in citing or referring to portions of the complaint." I would disagree with his opinion and would point out that whether or not the numerous facts and documents are numbered (by either paragraph or page or both) should not have any effect on their accuracy or their relevancy to the merits of this complaint. In fact, if Mr. Comley will take the time to thoroughly examine my original complaint, he will notice that I made numerous "factual" references to Exhibits #1-#8, which were clearly labeled as such. I also provided a summary timeline of dates of violations of DNR rules and regulations and presented my formal complaint to the Commission in a logical and easy to understand manner. I find it hard to believe that the manner and "style" in which my complaint was "written" should have any bearing on the factual representations reported therein.

However, if there is still confusion as to the basis of my complaint, I would like to have the opportunity to appear before the Commission in a public hearing to further explain my allegations

and accompanying documentation which support my formal complaint against Folsom Ridge, LLC (Owning and Controlling the Big Island Homeowners Association).

In response to the Respondent's claim that I have not adequately explained my contentions of "corporate abuse, misrepresentation, lack of responsibility and disregard of the public's health and safety", I would respectfully refer the Commission to review the attached Exhibits #1 through #8 in my original complaint. The highlights of those exhibits are once again summarized below:

As I stated in my original Formal Complaint: "Folsom Ridge LLC, Longmont, Colorado, developer of Big Island real estate, has been a less than "model corporate citizen" to residents of Camden County and the State of Missouri.

Since 1998, there have been numerous instances of uncivil-type behavior from the project manager (threats, harassment and even physical violence) as well as disrespect for the environment (trees cut down and never replanted; illegal dumping; unsupervised fires set) as well as documented disregard for state laws and regulations resulting in numerous violations, legal actions, and homeowner complaints over the past seven (7) years including":

**(1) Starting construction/installation of the water and sewer system without a permit from the Missouri Department of Natural Resources (DNR).
(November 19, 1998)**

**(2) Issued a Notice of Violation #1315 by the DNR for failure to construct water lines and sewer lines in accordance with approved plans.
(May 25, 1999)**

**(3) Received a reprimand by the Camden County Road and Bridge Department for digging up a utility crossing to repair a leaking line, tearing up new asphalt, without a permit.
(Sept. 26, 2000)**

**(4) Responding to issues raised by the Attorney General of Missouri, specifically that the wastewater system was not built as submitted to the Department of Natural Resources, answer was given that the DNR agrees that the system was not constructed as approved.
(April 17, 2002)**

**(5) Received DNR Complaint JC 011193 for improper disposal (dumping) of roofing shingles on top of the hill near the wastewater treatment plant and public drinking water supply.
(October 18, 2001)**

**(6) Settlement Agreement (SA) requiring Folsom Ridge, LLC to correct the violations observed during the digging of the test pits on January 12, 2004 which proved that the water and sewer lines have been improperly installed per DNR regulations.
(April 26, 2004)**

**(7) Issued a Notice of Violation #11210SW by the DNR for causing or permitting construction, installation or modification of community public water supply without written authorization by extending Phase I Water Main "off the Island".
(June 28, 2005)**

(8) Issued a series of violations of the Missouri Safe Drinking Water Regulations by the DNR. Included in these were: failure to collect routine samples from the distribution system; dispensing of water without obtaining a written permit to dispense water; and failure to develop a written total coliform bacteria sample siting plan. In addition, several construction deficiencies in the public water system were also noted. (June 28, 2005)

I contend that this evidence does point out a 7-year pattern of "corporate abuse, misrepresentation, lack of responsibility and disregard of the public's health and safety." Folsom Ridge, LLC (Owning and Controlling the Big Island Homeowners Association) denied for five (5) years that the sewer and water mains were improperly constructed and installed as per DNR regulations, which definitely was a misrepresentation of the facts and did endanger the public's health and safety.

It was only UNTIL the DNR ordered test pits to be dug January 12, 2004 that Folsom Ridge's "cover up" of the truth was exposed and the claims of the Concerned Homeowners of Big Island, who will ultimately inherit the responsibility as well as the financial and legal liabilities with the transfer of ownership of the system to them September 1, 2006, were proven to be true. That fact can be documented further as a Settlement Agreement (SA) was signed and attested to on April 10, 2004 by Reggie Golden and Rick Rusaw, representing Folsom Ridge, LLC. The SA confirmed their irresponsibility, and they were required to pay a civil penalty and correct the violations through a schedule of compliance. **(Refer to EXHIBIT #6 of my Original Complaint).**

Unfortunately, the "corporate abuse, misrepresentation, lack of responsibility and disregard of the public's health and safety" continued even while the respondent was operating under the Settlement Agreement (SA). Specifically, Paragraph 15 of the SA stated, "In consideration for the release contained herein, Folsom agrees to comply with all applicable Missouri water pollution statutes and regulations in the State." As Items #7 and #8 listed above point out, Folsom continued to ignore state-mandated compliance with laws and regulations and committed **TWO MORE** cases of "corporate abuse, misrepresentation, lack of responsibility and disregard of the public's health and safety" in June 2005 through a series of violations of the Missouri Safe Drinking Water Regulations. It is a pattern of misbehavior that cannot be allowed to continue. Their corporate negligence and failure to show respect and compliance with state laws could compromise the health and safety of the public drinking water supply for residents on Big Island.

One further example of misrepresentation by Folsom Ridge, LLC (Owning and Controlling the Big Island Homeowners Association) is attached to this petition to emphasize to the Commission that my complaint should NOT be dismissed until there is a full, impartial and open public hearing allowing Folsom Ridge, LLC (Owning and Controlling the Big Island Homeowners Association) the opportunity to refute the evidence presented in my complaint. The attached two-page letter **(clearly labeled EXHIBIT #9)** and dated November 29, 2000 was sent by R.V. (Reggie) Golden, manager, Big Island Homeowners Association, P.O. Box 54, Longmont, CO 80502 to "non-members" of the Homeowners Association of Big Island imploring them to join the organization. In that letter, Mr. Golden stated, **"We have also dug several holes and have verified proper installation of water and sewer lines."** That claim was later proven to be completely false when the DNR ordered test pits to be dug January 12, 2004. That false statement by Mr. Golden to the homeowners was in my opinion, another documented example of "corporate abuse, misrepresentation, lack of responsibility and disregard of the public's health and safety."

The following items address other contentions of Mr. Comley that I do not have cause to state a claim and ask relief from the Public Service Commission against the named respondent, Folsom Ridge, LLC.

1. David Lees, partner and original project manager for Folsom Ridge, LLC as well as one of the three corporate representatives "controlling" the board of the BIHOA, personally threatened me on several occasions while walking on the public roadway on Big Island with his erratic driving of his pickup. However, the most serious threatening incident occurred on a summer weekend in 2001 when Mr. Lees climbed into a heavy equipment back-hoe loader and made movement with that piece of equipment down the road toward me and another resident while we were walking near the corporate sales office. He realized he was under the scrutiny of another resident but fortunately for us he also saw another vehicle heading his way down the road being driven by Tim Miller, a Folsom Ridge, LLC "real estate associate", and so he immediately put the machine in reverse and re-parked it by the side of the road. This instance alone was just one example of corporate abuse (threats, intimidation, harassment) by an official representative of Folsom Ridge, LLC (and corporate board member of the BIHOA) against Big Island homeowners. As part of their discovery process, I would recommend that the Commission should specifically ask Folsom Ridge, LLC to explain why Mr. Lees is no longer a partner of Folsom Ridge, LLC (or corporate board member of BIHOA) and to explain his past behavior as project manager. This is another reason why a fair, impartial, and open public hearing is needed to fully understand all the issues and concerns homeowners have had to deal with on Big Island since 1998. I am not the only resident who has been physically threatened/intimidated and in one documented case actually physically assaulted by Mr. Lees.
2. As a private property owner on Big Island, I am more than just a "casual" bystander as to what negative publicity, especially the sort we have seen associated recently in the local Camden and Lake Ozark press involving stories about all the problems with the Osage Beach water company (**Refer to attached EXHIBIT #10**), and how negative publicity about violations of Missouri's safe drinking water laws could do the same sort of damage to Big Island's image as well as having an adverse effect on property values. As a private taxpaying citizen of Camden County and the State of Missouri and homeowner on Big Island, I do have a vested interest in how the bad reputation and continuing inappropriate corporate business practices of the developer, Folsom Ridge, LLC (Owning and Controlling the Big Island Homeowners Association) could negatively impact my property values. To further state my case, even though I currently am not connected to the community water/sewer system being operated, controlled and owned by Folsom Ridge, LLC, at some point in the future I may want to start using those services and would not want to accept any financial or legal liabilities due to someone else's negligence, mismanagement or failure to obey the laws and regulations of the State of Missouri governing the safe and legal operation of such a community water/sewer system. Therefore, I do have a vested interest in its proper management and safe operational practices. The relief requested herein is that the Public Service Commission make a determination and ruling that the BIHOA is operating as an unlicensed public utility by providing service and/or billing individuals who are not members of the association and therefore, should become a regulated public utility under the jurisdiction of the Public Service Commission.
3. I also requested in my complaint "that the PSC investigate the claims of this petition and others they've received from Big Island residents to determine if a temporary injunction...until a determination and ruling can be made by the PSC as to the BIHOA, and its legal operation as a public utility (meeting all those requirements)." Although I did not realize that a temporary injunction was not a part of the judicial power of the Commission, I do believe that until there is a fair and impartial hearing "in a public venue" to discuss the pros and cons of all the complaints pending before the PSC involving Folsom Ridge, LLC as to its "owning and controlling the Big Island

Homeowners Association", there can be no closure for the many claims and concerns expressed by residents of Big Island as to how Folsom Ridge, LLC has conducted itself since 1998. That is why the PSC must be involved in this process, and why a fair, impartial and open public hearing is in the best interests of all concerned.

4. To address Mr. Comley's concerns that I am not a member of the BIHOA, and not a customer of the respondent, and not a representative of the public in the area affected or a competitor, I would agree on three of his allegations: (1) I am not a member of the BIHOA; (2) I am not a customer of the respondent; and (3) I am not a competitor. However, I would like to add a 4th item to the list for consideration. And that is I am a property owner with a private water well in the area affected. For this reason, and because of the fact that Folsom Ridge, L.L.C., (Owning and Controlling the BIHOA), has shown neglect not only for the improper installation of the water/sewer system, but also for the many sewer leaks that have occurred around the Island, my personal health and safety with potential contamination to my private drinking water supply have been placed at risk. Many of the sewer leaks were ignored and sewage seepage was allowed to contaminate the surrounding areas as well as runoff into the Lake itself. In addition, I must disagree with Mr. Comley's assertion that "to have standing as a complainant, Mr. Weir must either be...**a representative of the public in the area affected...**" As a professional journalist who has been involved in the community newspaper business in Missouri for more than 35 years, I can assure Mr. Comley and the Commission that I indeed represent the public when matters of the public's health and safety or well being is concerned. As a graduate of the School of Journalism of the University of Missouri-Columbia, I agreed to live and conduct myself professionally and personally by the principles contained in the school's hallowed *Journalist's Creed* which contains among other pledges: **"I believe that the public journal is a public trust; that all connected with it are, to the full measure of their responsibility, trustees for the public; that acceptance of lesser service than the public service is a betrayal of this trust."** I also have a daily business operating philosophy that states: "Count that day LOST, when you or your business has not done something to make the community you serve a better place to live in, a better place to do business in and a better place to raise a family in." What I have recorded, reported, documented and compiled while witnessing seven (7) years of "corporate abuse, misrepresentation, lack of responsibility and disregard of the public's health and safety" is beyond reproach and deserves a fair, impartial and open public hearing before the Public Service Commission. More importantly, since I am NOT a customer or competitor or member of the BIHOA, I bring an impartial and factual voice to help resolve these ongoing issues with Folsom Ridge, LLC (Owning and Controlling the BIHOA) and the Concerned Homeowners of Big Island. My complaint is based on factual documents, and where I have "opinions", I have stated them to be just that. And where I have stated facts, I have provided members of the Commission with documented EXHIBITS to prove those claims.

In summary, to refute Mr. Comley's (representing Folsom Ridge, LLC) request for dismissal of my complaint, I offer the following as reasons enough to have my case receive a fair, impartial and open public hearing by the Commission.

After nearly seven (7) years of witnessing AND documenting the most unbelievable cases of corporate abuse, misrepresentation, lack of responsibility and disregard for the public's health and safety as well as threats to my own personal well being and potential negative effects on my property values, as well as the lack of enforcement action by the Department of Natural

Resources (DNR) to enforce their own regulations by allowing the BIHOA to continue its management and operational practices of providing service and/or billing nonmembers of the association, when their (DNR) own regulations require that all individuals who are connected to the system and receiving services also be a member of the association, and yet DNR continued the issuance of operating permits to the same repeat offender, thus I have been left with no choice and no option but to file this "Formal Complaint" with the Public Service Commission of the State of Missouri in hopes they will be able to bring a sense of law and order to Big Island and help protect the residents' public drinking water supply from being further compromised affecting their health and safety. The public interest must be served.

Under the jurisdiction of the Public Service Commission of the State of Missouri, I ask that the Commission not dismiss my case, and regulate the operations of the water/sewer system of Big Island as a regulated public utility under their jurisdiction.

Respectfully submitted,



Ben F. Weir
3515 S.W. Meyer Blvd.
Blue Springs, MO 64015

Attachments:

Exhibit #9

Exhibit #10

Cc: Office of Public Counsel
General Counsel's Office
Mark W. Comley

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via U.S. Mail, postage prepaid, this 3rd day of November 2005 to the General Counsel's Office and Office of Public Counsel as well as to Mr. Mark W. Comley, Newman, Comley & Ruth P.C., 601 Monroe St., Suite 301, P.O. Box 537, Jefferson City, MO 65102

EXHIBIT #9

NOVEMBER 29, 2000
Golden Letter To Non-
Homeowners Members

Big Island Homeowners Association
P. O. Box 54
Longmont, CO 80502

November 29, 2000

"Non-member"
Version

Benjamin & Karen Pugh
HCR 67, Box 726
Roach, MO 65787

Dear Benjamin & Karen,

Recently we sent a letter to the Homeowners Association Members of Big Island. We will be having a meeting for all members of the Homeowners Association (HOA) on December 29, 2000. We would like to extend another invitation to you to join the HOA thereby making you eligible to attend the meeting. In the interest of all the residents who choose not to be a part of the HOA, we will hold an informational meeting on December 29, 2000 at 1:00 p.m. and would like for you to attend if you choose not to join the HOA.

Since the summer when the HOA was formed, a group of concerned island residents who did not choose to belong to the HOA presented their concerns. While we have worked diligently to accommodate these wishes, we have discovered that we will not have complete consensus on all the issues and feel it is time to bring this to closure. We have addressed all of the concerns raised in our summer meetings. Some of these items include:

- 1) One vote per lot (not allocated by square feet) - drafted in the new covenants.
- 2) No different classes of membership (all get the same vote) - drafted in the new covenants.
- 3) Folsom Ridge, LLC warranting the system until September 1, 2005
- 4) Restricting the boundary of the area the system will serve to only include the Big Island Lake Sites, Big Island Lake Sites 1st Addition, Portage Park Unit 3, Portage Park Unit 1, and all other property on the Island (peninsula) itself.

* We have also dug several holes and have verified proper installation of water and sewer lines. In addition, we have either made commitments to or provided the following:

- a) Cleanup of construction areas is nearly complete.
- b) We will replant the construction areas to be completed in the spring when the horticulturist recommends planting.
- c) We have cleared an area for boat trailer storage.
- d) We have built a boat ramp for Island residents' use - one key will be provided to each homeowner.
- e) We will subsidize the water and sewer systems for costs over the monthly assessment until June 30, 2001.

Folsom Ridge, LLC has completed the following items, which have improved the value of all residents' property.

- 1) Sewer System (approved by DNR) – available to the entire Island – gives residents an option to connect when their old out of date sewage treatment methods fail.
- 2) Water System (approved by DNR) – available to the entire Island.
- 3) Paved Road – will be paved all the way around the Island.
- 4) Provided an area for trailer storage to limit visual impacts.
- 5) Helped to clean up the water in the lake. Hooked up at least two systems that were dumping raw sewage into the lake.
- 6) Built a boat ramp for all island residents to use.
- 7) Provided a means to upgrade the phone service on the Island.

We believe it is in the best interest of all Island residents, as well as the HOA, to have everyone belong to the HOA that is hooked on to the system. The HOA will be much stronger if we all are united. We have worked diligently to address the concerns of this group in a reasonable fashion, however, we don't believe that we will reach consensus with all the members of this group as a few have indicated that they would never join the HOA. It is our desire to be good neighbors and friends. Big Island has changed and will continue to change. Folsom Ridge, LLC has and will do its part to help Big Island become one of the lake's most desired communities. In addition to being the developers, all of the members of Folsom Ridge, LLC have residences on the Island.

We want to extend an offer to have you join the HOA. If you're interested in joining or reviewing the documents we sent to the HOA members please give me a call at 303-702-0708. The following documents were sent to the HOA members:

- 1) Notice of Special Meeting of Big Island Homeowners Association.
- 2) Revised Bylaws of Homeowners Association (proposed).
- 3) Revised Covenants and Restrictions (proposed).
- 4) Letter of Commitment to Homeowners Association from Folsom Ridge, LLC.
- 5) Proxy for your vote.

If you would like a copy of the documents prior to the meeting please give me a call and I will mail them to you. The HOA's offer to join will extend for 90 days after the December 29th meeting.

We look forward to seeing you at our meeting on December 29th. If you have any questions in the meantime, please don't hesitate to call.

Sincerely,



R. V. (Reggie) Golden
Manager

PSC EXHIBIT # 10--

July 29, 2005

AG Nixon sues Osage Beach water company for numerous violations of state water laws at two subdivisions

Camdenton, Mo. — Attorney General Jay Nixon has sued an Osage Beach water company for multiple violations of Missouri's drinking water and clean water laws at two lake-area subdivisions.

According to the petition filed in Camden County Circuit Court, Osage Water Co., which operates the water supply system for the Cimarron Bay Subdivision, **violated state drinking water regulations** by failing to:

1. Submit a sample for a lead and copper analysis that was due June 30, 2005.
2. Submit samples for lead and copper analysis from January through June 2002.
3. Obtain a permit to dispense water.
4. Submit a sample for bacteriological analysis in March 2003.
5. Develop and deliver to customers a Consumer Confidence Report in 2001 or 2002.

Missouri Department of Natural Resources inspectors issued a notice of violation against Osage Water on Aug. 6, 2004, and the company has not corrected the violations.

Nixon said the company **violated clean water regulations** by allowing untreated water to bypass its KK Treatment Plant, which serves the Eagle Woods subdivision, in February 2004. Osage Water also violated clean water regulations in June 2005 by allowing untreated water to bypass the plant and flow into the Lake of the Ozarks. Inspectors from the Department of Natural Resources issued notices of violation in both of these cases, and Osage Water failed to resolve the issue.

"Osage Water needs to fix these violations immediately to ensure the safety of residents in the Osage Beach area," Nixon said. **"There is no excuse for compromising the safety of Missouri's water supply."**

Nixon's lawsuit asks the court to order Osage Water to pay penalties for the violations, correct the violations and comply with state drinking water and clean water regulations, which are created and enforced by the Missouri Safe Drinking Water and Clean Water commissions. Nixon's office represents the commissions and the Department of Natural Resources in this case.