

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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|---|---|---|
| Cathy J. Orler, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | <u>Case No. WC-2006-0082, et al.</u> |
| |) | |
| Folsom Ridge, LLC, |) | |
| |) | |
| and |) | |
| |) | |
| Big Island Homeowners Water and Sewer |) | |
| Association, Inc., f/k/a Big Island |) | |
| Homeowners Association, |) | |
| |) | |
| Respondents. |) | |
| | | |
| In the Matter of the Application of Folsom Ridge, |) | |
| LLC, and Big Island Homeowners Water and Sewer |) | |
| Association, Inc., for an Order Authorizing the |) | |
| Transfer and Assignment of Certain Water and |) | <u>Case No. WO-2007-0277</u> |
| Sewer Assets to Big Island Water Company and |) | |
| Big Island Sewer Company, and in Connection |) | |
| Therewith Certain Other Related Transactions. |) | |

ORDER SUSTAINING OBJECTIONS TO LATE-FILED
HEARING EXHIBIT 105

Issue Date: April 20, 2007

Effective Date: April 20, 2007

The Commission held a combined evidentiary hearing in these matters on February 28 through March 2, 2007.¹ After the hearing had adjourned, but while all of the

¹ All dates throughout this order refer to the year 2007 unless otherwise noted.

parties were still in attendance, Ms. Orler approached the presiding officer requesting to offer her rebuttal testimony from Case No. WA-2006-0480 into evidence, believing this testimony had been requested by two of the Commissioners.

Because the parties were all still present in the hearing room, the presiding officer convened a conference on this matter and the parties agreed to allow Ms. Orler to offer the testimony **subject to confirmation of the request when transcripts become available and subject to all customary and reasonable objections by the parties.**

Ms. Orler was directed to submit this testimony as a late-filed exhibit, marked as Exhibit Number 105, no later than March 12. **The presiding officer also instructed the parties that this exhibit would not be received into evidence until the presiding officer had ruled on any objections from any of the parties, and a deadline was set for those objections to be filed.** Ms. Orler timely filed the Exhibit 105, and the Respondents and the Staff of the Missouri Public Service Commission filed timely objections to the admission of this exhibit.

The primary objection made by these parties is that the official transcript reflects that no such request for this testimony was made by any of the Commissioners. Respondents and Staff also object to the admission of this exhibit for multiple other reasons.

Ms. Orler was allowed an adequate opportunity to respond to the objections. Ms. Orler concedes that the request for filing this exhibit does not appear in the official transcript from the case. Ms. Orler further states in her response that: (1) the request from the Commissioners was made during opening statements segment of the proceedings; (2) she complied with the Commissioners' request; (3) she complied with the Commission's

order to submit the testimony; and (4) she has been unable to confirm that such a request was made off-the-record with the videotape of the hearing, because there is no videotape for the hearing on February 28.

While the Commission does try to make videotapes of its hearings, and it is unfortunate that such a tape is not available from February 28, a videotape is not the official record of any proceeding before this Commission. Consequently, the lack of a videotape is irrelevant to this issue. The official transcript is the official record, and the official record in this proceeding does not reflect a request being made to Ms. Orler to offer this exhibit into evidence. Nor could the Commission consider honoring such a request if it were not made on the official record with all proper parties to the proceeding in attendance.

Additionally, Ms. Orler offered no response to the list of secondary objections made by Respondents and Staff. The Commission finds that even if the exhibit was offered appropriately, which it was not, that the secondary objections are valid and shall be sustained. Given that no basis has been established for the proper admission of this exhibit, and given that the secondary objections encompass the entire content of this exhibit, it shall be excluded from the record.

IT IS ORDERED THAT:

1. All objections to Cathy J. Orler's offering of Exhibit 105 into the record that were filed by Folsom Ridge, LLC, and Big Island Homeowners Water and Sewer Association, Inc. and by the Staff of the Missouri Public Service Commission are sustained.
2. Exhibit 105 is excluded from the official record in this matter.

3. This order shall become effective on April 20, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Harold Stearley, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 20th day of April, 2007.