

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 27th day of
March, 2007.

Cathy J. Orlor,)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-2006-0082, et al.</u>
)	
Folsom Ridge, LLC, Owning and Controlling)	
the Big Island Homeowners Association,)	
)	
Respondent.)	

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 GRANTING REQUEST FOR AN ANCILLARY HEARING

Issue Date: March 27, 2007

Effective Date: March 27, 2007

The combined evidentiary hearing was held in these matters from February 28, 2007 through March 2.¹ During the hearing, the Commission subpoenaed John MacEachen from the Department of Natural Resources, who appeared on March 2 and provided testimony concerning the specifications, characteristics and installation of flexible piping used for service lines on Big Island. Due to the limited opportunity at hearing to allow

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

Folsom Ridge L.L.C. and Big Island Homeowners Water and Sewer Association, Inc. (collectively “Respondents”) to respond to this testimony, at the close of the hearing the Commission granted leave to Respondents to supply additional testimony on the nature of the service line installations.

On March 7, the Commission adopted an ancillary procedural schedule to allow Respondents to submit their additional testimony and for the parties to provide rebuttal and surrebuttal testimony in response. The order also stated:

It is the Commission’s belief that the testimony, and the opportunities for rebuttal and surrebuttal, should be sufficient to allow adequate process to the parties with regard to addressing Respondents’ additional testimony. However, the Commission will also offer the parties the opportunity to request a hearing, restricted exclusively to the subject matter and witnesses providing the additional testimony.

The deadline to request a hearing of the nature described was set for 12:00 p.m. on March 27. In the event the Commission granted any request for additional hearing time, the date set for the hearing in the ancillary procedural schedule was March 30.

On March 12, Respondents filed the testimony of James T. Crowder to address the limited subject matter concerning the installation of the service lines. On March 19, Complainants Cathy J. Orlor and Benjamin D. Pugh filed rebuttal testimony.

Also on March 19, Complainants Cathy J. Orlor, Cindy Fortney and Benjamin D. Pugh filed a request for a hearing. In their request, the Complainants contend that the additional testimony should have been provided by Kenneth Carroll, the contractor hired for the installation of the service lines, and not Mr. Crowder, the construction manager that performed the day-to-day monitoring and inspection of the installation. Mr. Crowder was also responsible for approving and purchasing the materials used for the service line installations. Complainants base this assertion on their apparent belief that Respondents’

request was limited to adducing the testimony of Mr. Carroll by a statement made at hearing. The Commission, however, made no such restriction in its order granting leave for the additional testimony. Respondents were free to submit the testimony of their chosen witness to address the limited subject matter delineated in its ruling at hearing and in its order setting the ancillary procedural schedule.

Complainants' request for a hearing also asks that both Mr. Crowder and Mr. Carroll provide testimony at hearing. As previously noted, in the order adopting the procedural schedule, any additional hearing time would be restricted exclusively to the subject matter of the additional testimony and to Respondents' witness/witnesses providing that additional testimony. Consequently, the grant of an ancillary hearing would be restricted to the introduction of the post-hearing testimony that was filed as directed by the ancillary procedural schedule, and to the cross-examination and re-direct examination of Mr. Crowder.

On March 21, Respondents filed a response to Complainants' request for a hearing. Respondents state they have no intention of offering additional evidence from any other witness. Respondents also assert that the rebuttal testimony provided by Complainants is sufficient to address the testimony of Mr. Crowder and that no special hearing is required.

Commission Rule 4 CSR 240-2.130(8) provides, in pertinent part, that: "A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at hearing." The Commission has provided Respondents with just such an opportunity. To ensure adequate due process for all of the parties to address the additional evidence submitted, the Commission shall grant the request for the ancillary hearing. **However, as previously noted in this order, the grant of this ancillary**

hearing is restricted to the offering of the newly filed testimony of the parties, entertaining objections to that testimony, and to the cross-examination and re-direct examination of Respondents' witness, Mr. Crowder.

IT IS ORDERED THAT:

1. Cathy J. Orlor's, Cindy Fortney's and Benjamin D. Pugh's request for an ancillary hearing is granted.

2. The subject matter and testimony at the ancillary hearing is exclusively restricted to those matters delineated in the body of this order.

3. The hearing will be held on March 30, 2007, beginning at 8:30 a.m. The hearing will be held at the Commission's office at the Governor Office Building, Room 305, 200 Madison Street, Jefferson City, Missouri. This building meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

4. This order shall become effective on March 27, 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)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Stearley, Regulatory Law Judge