

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 1st day of  
May, 2007.

Cathy J. Orler,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. WC-2006-0082, et al.</u></b>
	)	
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	)	<b><u>Case No. WO-2007-0277</u></b>
Sewer Assets to Big Island Water Company and	)	
Big Island Sewer Company, and in Connection	)	
Therewith Certain Other Related Transactions.	)	

**ORDER DENYING PETITION TO REOPEN RECORD FOR THE TAKING  
OF ADDITIONAL EVIDENCE**

Issue Date: May 1, 2007

Effective Date: May 1, 2007

The Commission held a combined evidentiary hearing in these matters on February 28 through March 2, 2007.<sup>1</sup> Post hearing briefs and proposed findings of fact and

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<sup>1</sup> All dates throughout this order refer to the year 2007 unless otherwise noted.

conclusions of law were originally due on April 13; however, after the Commission granted three extensions of time, the due dates for these pleadings was extended until 8:00 a.m. on May 1.

On April 29, Complainant Cathy J. Orler filed a petition, pursuant to Commission Rule 4 CSR 240-2.110(8), to reopen these matters for the taking of additional evidence. Ms. Orler states that Hearing Exhibit 20, which was received and admitted into evidence without objection on March 1, has various attachments which are incomplete or blank. Hearing Exhibit 20 is Respondents' "Joint Application for Approval of Transfer of Assets to Nonprofit Companies Organized Under Chapter 393, RSMo."

Ms. Orler states that: (1) she believes that the information that she believes should be contained in these attachments should be made public; (2) a complete copy of Exhibit 20 should be made available to each residential property owner in the Big Island Subdivision; and, (3) the residents of Big Island should be allowed thirty days to voice their objections regarding the proposed transfer of assets – a condition that Ms. Orler points out is listed in Appendix 1 to the exhibit, entitled "Agreement for Sale and Transfer of Water Distribution System and Wastewater System."

Commission Rule 4 CSR 240-2.110(8) provides:

A party may request that the commission reopen a case for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. Such a request shall be made by filing with the secretary of the commission a petition to reopen the record for the taking of additional evidence in accordance with these rules, and serving the petition on all other parties. The petition shall specify the facts which allegedly constitute grounds in justification, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. The petition shall also contain

a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing.

The omissions that Ms. Orler objects to are portions of exhibits attached to Appendix 1 of Exhibit 20, the “Agreement for Sale and Transfer of Water Distribution System and Wastewater System” (“Agreement”). These items were not complete at the time of its filing and its admission into the record. The items that are missing from the Agreement include dates and signatures, an itemization of assets, a specimen warranty deed, a list of properties subject to tap-on fees and a listing of Folsom parcels of land. However, Exhibit 20 contains the following footnote: “This document is waiting execution by the parties and finalization of some exhibits, but applicants expect no material changes to the text of the agreement itself.”

On April 30, Big Island Homeowners Water and Sewer Association, Inc. (“Chapter 393 Companies”) filed a motion to dismiss Ms. Orler’s petition. The Chapter 393 Companies correctly note that while the deadline for filing briefs has been extended to May 1, the Staff of the Missouri Public Service Commission (“Staff”) filed its brief on April 27, prior to the filing of Ms. Orler’s petition. As such Ms. Orler’s petition is untimely. Additionally, Commission Rule 4 CSR 240-2.110(8) requires the petitioning party to specify the facts which allegedly constitute justification to reopen the record and provide an explanation as to why this evidence was not offered during the hearing. Ms. Orler’s petition fails to comply with these requirements.

On April 30, Staff filed a response to Ms. Orler’s petition. In addition to the other defects with Ms. Orler’s petition, Staff also points out that Ms. Orler’s request to order Respondents to provide copies of Exhibit 20 to all residents on Big Island exceeds the

scope of Commission Rule 4 CSR 240-2.130(13). That rule requires parties to provide an original copy of an exhibit to the court reporter and copies to each commissioner, the presiding officer, and each party.

As noted above, Exhibit 20 was received and admitted into evidence on March 1, without objection. The proper time for having raised any objections as to the contents or completeness of the document has long since passed. Additionally, as correctly noted by Public Counsel at the time of its admission: "I don't really have any objection to having it marked as an exhibit for convenience, but I will note that it's a pleading. It's not anything -- there isn't any sworn testimony here, I don't believe that it has any real evidentiary value."<sup>2</sup> Moreover, the Agreement has not yet been executed and the Respondents have represented that there will be no material changes to its text. At the time of its execution, the provision allowing Big Island residents an opportunity to voice any objections will become operational.

The Commission will not grant Ms. Orlor's petition to reopen the record for the admission of additional evidence since: (1) the proper time for raising her particular evidentiary concerns was on March 1; (2) her petition was untimely filed; (3) the petition fails to specify facts constituting grounds in justification for reopening the record, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing; (4) the petition fails to provide an explanation as to why the additional evidence was not adduced during the hearing when Ms. Orlor had full opportunity to address this subject matter; (5) the alleged missing information has no evidentiary value; (6) the requested relief involves the enforcement of an unexecuted contractual provision over

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<sup>2</sup> Transcript, p. 737, lines 6-10.

which the Commission has no jurisdiction to act; and (7) the requested relief exceeds the Commission's requirements for filing exhibits.

**IT IS ORDERED THAT:**

1. Cathy J. Orlor's "Petition to the Commission to Reopen Record for Taking of Additional Evidence" is denied.
2. This order shall become effective on May 1, 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