

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 18th day of  
October, 2005.

Cathy J. Orlor,

Complainant,

v.

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

Respondent.

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**Case No. WC-2006-0082**

**ORDER DENYING MOTION TO DISMISS, AND DIRECTING STAFF TO  
INVESTIGATE AND REPORT**

Issue Date: October 18, 2005

Effective Date: October 18, 2005

On August 18, 2005, Cathy J. Orlor filed a complaint against Folsom Ridge, LLC (owning and controlling the Big Island Homeowners Association). The Commission notified Folsom Ridge and the Homeowners Association of the filing of the complaint in a notice issued August 19, and directed them to file a response by September 19. At the request of Folsom Ridge, the time for response was subsequently extended to September 29. On that date, Folsom Ridge filed a Motion to Dismiss Complaint and Motion to Extend Time to File Answer Pending Disposition of Motion to Dismiss. The Complainant filed a response to that motion on October 11.

Folsom Ridge's motion to dismiss argues that the complaint fails to state a claim upon which relief may be granted against Folsom Ridge. Essentially, Folsom Ridge

contends that the complaint is directed against the Big Island Homeowners Association and not against Folsom Ridge. Folsom Ridge contends that the Homeowners Association is a separate legal entity with bylaws and a board of directors. For that reason, Folsom Ridge requests that the complaint against it be dismissed.

Ms. Orler's response emphasizes her contention that Folsom Ridge and the Homeowners Association are essentially the same entity. It is this single entity that she contends is operating illegally as a public utility subject to regulation by the Commission.

The standard for review for consideration of a motion to dismiss for failure to state a claim has been clearly established by Missouri's courts as follows:

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.<sup>1</sup>

By that standard, the Commission must consider Folsom Ridge's motion to dismiss based on the facts alleged in Orler's complaint.

In her complaint, Orler alleges that the Big Island Homeowners Association is offering sewer services to customers who are not members of that association, meaning that it is offering its services to the public and should be regulated as a public utility. She also contends that Folsom Ridge, as developer of the subdivision that is being served by the Homeowners Association, is in actual control of the Homeowners Association. Those allegations, if accepted as true, as they must be for purposes of a motion to dismiss, are sufficient to invoke the jurisdiction of the Commission over both the Homeowners

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<sup>1</sup> Eastwood v. North Central Missouri Drug Task Force, 15 S.W.3d 65, 67 (Mo. App. W.D. 2000).

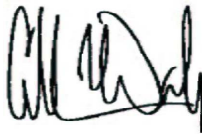
Association and Folsom Ridge. The motion to dismiss will be denied and Folsom Ridge and the Homeowners Association will be directed to file their answers to the complaint.

In an effort to facilitate the gathering of facts relating to this complaint, the Commission will direct its Staff to investigate and report its findings to the Commission and the parties.

**IT IS THEREFORE ORDERED:**

1. That Folsom Ridge, LLC's Motion to Dismiss is denied.
2. That Folsom Ridge, LLC and the Big Island Homeowners Association shall file their answer to Cathy J. Orlor's complaint no later than October 25, 2006.
3. That the Staff of the Commission shall investigate the facts relating to this complaint and report its findings in a report to the Commission no later than December 19, 2005.
4. That this order shall become effective on October 18, 2005.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur  
Woodruff, Senior Regulatory Law Judge