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October 18, 2005

FILED²

OCT 19 2005

Missouri Public
Service Commission

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

Re: Case No. WC-2006-0082

Dear Judge Dale:

Please find enclosed for filing in the referenced matter the original and five copies of an Application for Rehearing of Commission's Order Denying Motion to Dismiss.

Would you please bring this filing to the attention of the appropriate Commission personnel.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:


Mark W. Comley
comleym@ncrpc.com

MWC:ab

Enclosure

cc: Office of Public Counsel
General Counsel's Office
Cathy Orlor
Reginald V. Golden

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

OCT 19 2005

Missouri Public
Service Commission

Cathy J. Orler,)
)
Complainant,)
v.) Case No. WC-2006-0082
)
Folsom Ridge, LLC,)
)
Respondent.)

**APPLICATION FOR REHEARING OF COMMISSION'S
ORDER DENYING MOTION TO DISMISS**

COMES NOW Folsom Ridge, LLC (Folsom Ridge or Company) and pursuant to Section 386.500, RSMo 2000 and 4 CSR 240-2.160, moves and applies for rehearing of the Commission's Order Denying Respondent's Motion to Dismiss (hereinafter "the Order") and requests the Commission to amend the Order to allow for a customary effective date ten (10) days from the date of issuance of the same. In support of its application for rehearing and motion to amend, Folsom Ridge states as follows:

1. On August 18, 2005, Cathy Orler filed a complaint against Folsom Ridge and parenthetically added the phrase "Owning and Controlling the Big Island Homeowners Association." Big Island Homeowners Association is not denominated a party in the caption of the complaint, nor in the caption of any orders entered by the Commission.

2. On September 29, 2005, Folsom Ridge moved to dismiss the complaint on grounds that it fails to state a claim upon which relief can be granted since the complaint centers on conduct of Big Island Homeowners Association (BIHOA), not Folsom Ridge.

3. On October 18, 2005 the Commission denied the motion to dismiss and directed that both Folsom Ridge and BIHOA “file their answer to [the] complaint no later than October 25, 2006.”¹

4. The Order was made effective October 18, 2005, today’s date, rather than ten (10) days thereafter, which is the Commission’s regular custom and practice. In doing so, the Commission has failed to allow Folsom Ridge any time to file an application for rehearing as it is entitled to do under Missouri law. Applications for rehearing of an order must be filed pursuant to Section 385.500, RSMo. 2000 4 CSR 240-1.60. This statutory section provides that “[a]fter an order or decision has been made by the commission, the public counsel or any corporation or person or public utility interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such rehearing, if in its judgment sufficient reason therefore be made to appear...” §385.500, RSMo. 2000. Furthermore, Section 385.500, RSMo. 2000 provides that “[n]o cause or action arising out of any order or decision of the commission shall accrue in any court to any corporation or the public counsel or any person or public utility unless that party shall have made, before the effective date of such order or decision, application to the commission for a rehearing.” Id. In issuing its Order on October 18, 2005 indicating that the Order was effective on the very date it was issued, the Commission has essentially precluded Folsom Ridge from its rights of judicial review and appeal as those rights are protected under Missouri law.

5. The Order states that Ms. Orler’s allegations that BIHOA serves customers other than its members, and that Folsom Ridge, “as developer of the subdivision that is being served by the Homeowners Association, is in actual control of the Homeowners Association” . . . “are

¹ Folsom Ridge presumes the order meant to read “October 25, 2005.”

sufficient to invoke the jurisdiction of the Commission over both the Homeowners Association and Folsom Ridge.” Quite to the contrary, the Commission lacks jurisdiction over entities that control certificated utilities unless the entity in control is itself a regulated utility company, or otherwise is subject to regulation. That Folsom Ridge is in some form of control of BIHOA, a form of control that is unexplained in the complaint, is not the basis for a complaint before this Commission, or a condition that is within the Commission’s power to change. Corporate control issues are unrelated to whether the controlled entity supplies utility services in violation of the laws of this state. The allegations of the complaint, although vague,² seem to point only to BIHOA as the entity presumably supplying service and engaging in activities the Commission is empowered to regulate, not Folsom Ridge.

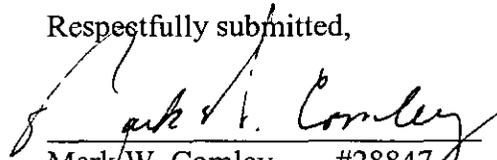
6. Furthermore, Ms. Orlor’s bare assertion that Folsom Ridge and BIHOA are the same entity is refuted throughout the complaint to the point that it begs credulity. Additionally, and in the spirit of 4 CSR 240-2.117 regarding summary dispositions, Folsom Ridge has attached to this application for rehearing as Exhibit 1 the certificate of incorporation for BIHOA. BIHOA is recognized by the Missouri Secretary of State as a duly organized separate nonprofit corporate body. Nothing in the complaint sets out reasons, which if believed, would erase its corporate identity and render it an alter ego for Folsom Ridge.

7. In sum, the Commission has directed a non party to file an answer in this case. No attorney has entered an appearance on behalf of BIHOA. There has been no order of the Commission joining BIHOA as a party. To counsel’s knowledge, notice of the complaint has never been served on BIHOA.

² The complaint suffers from such a lack of clarity to the extent that presently Folsom Ridge contends it cannot properly prepare a response or otherwise meaningfully prepare a defense for hearing. If this application is denied, Folsom Ridge reserves its right to file a motion for more definite statement of the complaint.

WHEREFORE, based upon the above and foregoing, Respondent Folsom Ridge requests that the Commission modify its Order dated October 18, 2005 in this matter to alter its effective date to October 28, 2005, grant it a rehearing, with oral argument, regarding the Commission's Order Denying Motion to Dismiss; and after such hearing, set aside and vacate its Order so that this complaint is dismissed against Folsom Ridge; further clarifying, if necessary, the party status of Big Island Homeowners Association; and also enter such other relief as the Commission deems just and proper.

Respectfully submitted,

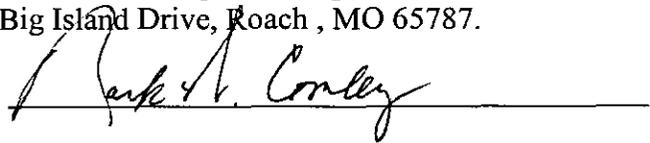


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Attorneys for Folsom Ridge, LLC

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 18th day of October, 2005, to General Counsel's Office at gencounsel@psc.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov; and via U.S. Mail, postage prepaid, to Cathy Orler, 3252 Big Island Drive, Roach, MO 65787.



STATE OF MISSOURI



Rebecca McDowell Cook
Secretary of State

CORPORATION DIVISION
CERTIFICATE OF INCORPORATION
MISSOURI NONPROFIT

WHEREAS, DUPLICATE ORIGINALS OF ARTICLES OF INCORPORATION OF
BIG ISLAND HOMEOWNERS ASSOCIATION, INC.

HAVE BEEN RECEIVED AND FILED IN THE OFFICE OF THE SECRETARY OF
STATE, WHICH ARTICLES, IN ALL RESPECTS, COMPLY WITH THE
REQUIREMENTS OF MISSOURI NONPROFIT CORPORATION LAW;

NOW, THEREFORE, I, REBECCA MCDOWELL COOK, SECRETARY OF STATE
OF THE STATE OF MISSOURI, BY VIRTUE OF THE AUTHORITY VESTED IN
ME BY LAW, DO HEREBY CERTIFY AND DECLARE THIS ENTITY A BODY
CORPORATE, DULY ORGANIZED THIS DATE AND THAT IT IS ENTITLED TO
ALL RIGHTS AND PRIVILEGES GRANTED CORPORATIONS ORGANIZED UNDER
THE MISSOURI NONPROFIT CORPORATION LAW.

IN TESTIMONY WHEREOF, I HAVE SET MY
HAND AND IMPRINTED THE GREAT SEAL OF
THE STATE OF MISSOURI, ON THIS, THE
16TH DAY OF JULY, 1998.

Rebecca McDowell Cook
Secretary of State



\$25.00