

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

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

**STAFF’S RESPONSE TO INTERVENERS’ OFFERING OF EVIDENCE IN SUPPORT OF THEIR  
INTERESTS IDENTIFIED IN THEIR APPLICATIONS AS RESPONSE TO RESPONDENTS’  
RENEWED MOTION TO DISMISS INTERVENING PARTIES**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) and for its Response to Interveners’ Offering of Evidence in Support of Their Interests Identified in Their Applications as Response to Respondents’ Renewed Motion to Dismiss Intervening Parties respectfully states as follows:

1. The primary hearing in this combined application and complaint case was held from February 28 through March 2, 2007. An ancillary hearing was held on March 30, 2007.

2. Four complainants: Cathy Orler, Benjamin Pugh, Cindy Fortney, and Stan Temares, appeared at the primary hearing.

3. Mr. Temares did not appear at the ancillary hearing. Ms. Orler, Mr. Pugh, and Ms. Fortney appeared at the ancillary hearing.

4. All post-hearing briefs in this matter were submitted by May 1, 2007. Ms. Orler, Ms. Fortney and Mr. Pugh submitted a joint brief as permitted by the presiding officer.

5. On May 1, 2007, Respondents filed a Renewed Motion to Dismiss Certain Intervening Parties and Motion to Dismiss Complaints of Nonparticipating Complainants.

6. On May 7, 2007, Cathy Orler, acting as an intermediary, submitted evidence on behalf of Complainants who had not participated in the hearing and had not submitted post-hearing briefs.

7. The non-participating Complainants did not seek leave of the Commission to submit evidence following the closure of the hearing and the filing of post-hearing briefs. The record was closed on the date that the non-participating Complainants sought to submit evidence. A petition to reopen the record for the taking of additional evidence was denied on May 1, 2007. One reason for the denial was that the request was untimely because Staff's post-hearing brief had been filed prior to submission of the request to reopen the record. Once post-hearing briefs are submitted, a party cannot request that the record be reopened for the taking of additional evidence. 4 CSR 240-2.110(8). Even if

the non-participating Complainants had sought permission to reopen the record, that request would have been untimely if it was made after Staff filed its post-hearing brief on April 27, 2007.

8. The non-participating complainants have not been subject to cross-examination by the other parties.

9. The evidence the non-participating Complainants now seek to submit has not been subject to relevant objections from the other parties.

**WHEREFORE** Staff respectfully requests that Interveners' Offering of Evidence in Support of Their Interests Identified in Their Applications as Response to Respondents' Renewed Motion to Dismiss Intervening Parties be excluded from the record as untimely.

Respectfully submitted,

/s/ Jennifer Heintz

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all parties and counsel of record this 9th day of May 2007.

/s/ Jennifer Heintz