

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Conference

December 8, 2005
Jefferson City, Missouri
Volume 1

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12 Cathy J. Orlor,)
13 Complainant,)
14 vs.) Case No. WC-2006-0082
15 Folsom Ridge, LLC,) (consolidated with Case Nos.
16 Owning and Controlling) WC-2006-0090, WC-2006-0107,
17 the Island Homeowners) WC-2006-0120, WC-2006-0121,
18 Association,) WC-2006-0122, WC-2006-0129,
19 Respondent.) WC-2006-0138 and WC-2006-0139)
20)
21)

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MORRIS L. WOODRUFF, Presiding,
SENIOR REGULATORY LAW JUDGE.

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22 REPORTED BY:

23 KELLENE K. FEDDERSEN, CSR, RPR, CCR
24 MIDWEST LITIGATION SERVICES

24

25

1 APPEARANCES:

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8 FOR: Folsom Ridge, LLC.

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15 FOR: Big Island Homeowners Water & Sewer
16 Association, Inc.

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22 FOR: Office of the Public Counsel
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FOR: Staff of the Missouri Public
Service Commission.

1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Welcome everyone to
3 Jefferson City, as well as people on the telephone. We're
4 here for a prehearing conference in Case No. WC-2006-0082,
5 which is actually a consolidation of nine separate
6 complaints. The name on the first case is Kathy Orler,
7 and there are other complainants as well. The defendant
8 in each case is Folsom Ridge, LLC, which is owning and
9 controlling the Big Island Homeowners Association. That's
10 the way the complaint was filed.

11 As indicated, we're here today for a
12 prehearing conference, and the way we're going to start
13 this out is I'm going to take entries of appearance, just
14 so that everyone knows who's here in the room and so
15 that's on the record. Some of the parties are represented
16 by attorneys. Others are here representing themselves.
17 So we'll begin with Folsom Ridge.

18 MR. COMLEY: Good afternoon, Judge. Let
19 the record reflect the entry of appearance of Mark W.
20 Comley, Newman, Comley & Ruth, 601 Monroe Street,
21 Suite 301, Jefferson City, Missouri, on behalf of Folsom
22 Ridge, LLC.

23 JUDGE WOODRUFF: Thank you, Mr. Comley.
24 And for the Big Island Homeowners Association?

25 MR. McELYEA: Your Honor, yes. My name is

1 Charles McElyea, Phillips, McElyea, Carpenter & Welch,
2 85 Court Circle, Camdenton, Missouri. Preliminarily also
3 I need to make a correction in the name. I filed a
4 special entry of appearance under the name of Big Island
5 Water & Sewer Association. It should be Big Island
6 Homeowners Water & Sewer Association, and I can file
7 amended pleadings to that effect if it please the Court.

8 JUDGE WOODRUFF: Okay. Thank you. The
9 next names I'm going to list are the individual
10 complainants, and I believe they're all representing
11 themselves. So we'll begin with Cathy Orlor. Is she
12 here?

13 MS. ORLER: Yes. I'm behind the post here.
14 I'm Cathy Orlor.

15 JUDGE WOODRUFF: Okay. And certainly you
16 can come on up to the table or come closer as you like.
17 Certainly during the informal portion of it I want
18 everybody up here to converse with each other as much as
19 possible.

20 Benjamin Pugh?

21 MR. PUGH: That is me, Judge. Been on Big
22 Island since 1962.

23 JUDGE WOODRUFF: Thank you. Ben Weir? I
24 believe you're on the phone, are you not, Mr. Weir?

25 MR. WEIR: That's correct, sir, I'm on the

1 phone.

2 JUDGE WOODRUFF: Stan Temares? I believe

3 he --

4 MS. ORLER: He's supposed to be calling.

5 MR. PUGH: I just talked to him about 15

6 minutes ago.

7 JUDGE WOODRUFF: All right. Mr. Temares is

8 planning on calling in. He's not here yet. We'll go

9 ahead without him at this point. If he comes in later, he

10 can certainly join us.

11 Judy Kenter?

12 MS. KENTER: I'm here.

13 JUDGE WOODRUFF: Okay. Behind the pole

14 also.

15 MS. KENTER: Yes.

16 JUDGE WOODRUFF: Joseph Schrader?

17 MR. SCHRADER: Yes, I'm here. I'm the one

18 from De Land, Florida.

19 JUDGE WOODRUFF: And Mr. Schrader is also

20 on the phone.

21 Duane Stoyer?

22 MR. STOYER: I'm here on the phone.

23 JUDGE WOODRUFF: Thank you. Cindy Fortney?

24 MR. FORTNEY: I'm here.

25 MS. FORTNEY: I'm here in person.

1 JUDGE WOODRUFF: All right. Cindy Fortney
2 is here, and Dean Leon Fortney is on the telephone.

3 For Staff?

4 MS. YOUNG: I'm Mary Weston, Assistant
5 General Counsel. My address is 200 Madison Street,
6 Jefferson City, Missouri.

7 JUDGE WOODRUFF: Thank you. And for the
8 Office of Public Counsel?

9 MR. MILLS: Appearing on behalf of the
10 Office of Public Counsel, my name is Lewis Mills. My
11 address is Post Office Box 2230, Jefferson City, Missouri
12 65102. Thank you.

13 JUDGE WOODRUFF: And for the Department of
14 Natural Resources? Is anyone here for DNR?

15 MR. MACEACHEN: John Maceachen, Public
16 Drinking Water.

17 JUDGE WOODRUFF: Mr. Maceachen, are you an
18 attorney?

19 MR. MACEACHEN: No, I'm not.

20 JUDGE WOODRUFF: Yes, sir?

21 MR. SUMMERFORD: Breck Summerford with the
22 Public Drinking Water Program, permits chief for the
23 program.

24 JUDGE WOODRUFF: And I assume you're not an
25 attorney?

1 MR. SUMMERFORD: I'm an engineer.

2 JUDGE WOODRUFF. Engineer.

3 MS. SEON: Elena Seon, Department of
4 Natural Resources, Water Protection Program, compliance
5 and enforcement.

6 JUDGE WOODRUFF: Okay. And you're not an
7 attorney either?

8 MS. SEON: No.

9 JUDGE WOODRUFF: All right. Well,
10 obviously we have a large group of people here today, and
11 for the benefit of the court reporter, particularly for
12 the people who are on the telephone, when you're going to
13 say something, if you want to say something, make sure you
14 tell her who you are so she doesn't have to try to
15 memorize either faces or voices for the people on the
16 telephone.

17 The main reason to bring you all here today
18 was to give you a chance to discuss this amongst
19 yourselves and to hopefully reach a resolution of all this
20 in entirety if you can. That's certainly not a
21 requirement. But also, even if you can't reach a total
22 settlement, you can reach hopefully some sort of an
23 agreement on how to proceed in this case and to give the
24 Commission some guidance on how to deal with these
25 complaints.

1 What I'm going to do is I'm going to ask
2 that counsel for Staff give me a report one week from
3 today as to what, if any, results occur today, if there's
4 been any sort of agreement amongst the parties as to how
5 to proceed. And if there is no agreement, you can just go
6 ahead and file a pleading to that effect. I would expect
7 that counsel for Staff will discuss this with everyone
8 else before she files that pleading.

9 MS. WESTON: Yes, I will, Judge.

10 JUDGE WOODRUFF: Thank you. There is one
11 pending motion out here that I probably need to deal with
12 at the start here, and that was a motion that was filed by
13 Cathy Orlor on December 1st. It was a motion to compel
14 discovery of documents from Folsom Ridge. She requested
15 that Folsom Ridge be compelled to provide a membership
16 list for the Big Island Homeowners Association and as well
17 as a copy of that organization's bylaws.

18 Folsom Ridge responded on December 6, and
19 it contended that Big Island Homeowners Association is a
20 separate legal entity, and that Folsom Ridge does not
21 possess or control the requested documents. Before I make
22 a ruling on this, does anyone else have anything they want
23 to add?

24 (No response.)

25 JUDGE WOODRUFF: All right. I don't hear

1 anything, anyone stepping forward. I'll go ahead and rule
2 on the motion at this time, then.

3 Folsom Ridge claims a separate legal status
4 from the Big Island Homeowners Association, and the
5 claimants allege that they are in practice at least one
6 and the same entity. They allege that Folsom Ridge
7 controls Big Island Homeowners Association. That was the
8 allegation in the complaint.

9 Now, that's ultimately an issue that the
10 Commission may have to decide as part of this complaint as
11 to the extent that there is any control or if they are, in
12 fact, entirely separate organizations. However, the
13 Commission can't prejudge that issue. That's what the
14 complainants have to prove. Later on they may be able to
15 prove that they are, in fact, a single party, but there's
16 no proof of that now.

17 So for the moment the Commission must
18 recognize that these two entities are separate legal --
19 that they have a separate legal existence, and since they
20 are separate entities, Folsom Ridge cannot be ordered to
21 produce documents on behalf of the Big Island Homeowners
22 Association.

23 As an alternative, and I believe this was
24 mentioned in Folsom Ridge's response, that the
25 complainants can subpoena this information from the Big

1 Island Homeowners Association. So that's the alternative
2 available to them. They also might be able to obtain them
3 simply by asking Big Island Homeowners Association for
4 these documents. That's something that you can discuss
5 during your conference today. So at this time, then, the
6 motion to compel is denied.

7 Are there any other matters that anyone
8 wants to bring up while we're on the record?

9 MR. MILLS: Your Honor, just so that I'm
10 clear, is the Big Island Homeowners Association or
11 whatever the name that superseded that name, is that
12 entity a party to this case in the Commission's view?

13 JUDGE WOODRUFF: It has not been added as a
14 party. It was not named as a party and is not currently a
15 party. I believe that is one of the issues that can be
16 discussed today as to whether or not that entity should be
17 added as a party, and I appreciate them being here today.

18 Any other matters anyone wants to bring up
19 while we're on the record?

20 MR. WEIR: Judge, Ben Weir --

21 JUDGE WOODRUFF: Yes, Mr. Weir?

22 MR. WEIR: -- Blue Springs, Missouri.
23 Would someone -- Mr. McElyea please clarify that he is the
24 legal representative of the Big Island Homeowners
25 Association?

1 JUDGE WOODRUFF: Mr. McElyea, can you
2 address that?

3 MR. McELYEA: Yes. I've entered a special
4 entry of appearance on behalf of Big Island --

5 MR. WEIR: Then would he be --

6 MR. McELYEA: -- Homeowners Water & Sewer
7 Association.

8 MR. WEIR: -- the legal representative who
9 should be subpoenaed to produce the records that we are
10 wishing to have as far as the membership and the bylaws?

11 JUDGE WOODRUFF: Mr. McElyea?

12 MR. McELYEA: I'm sorry. I didn't hear his
13 question.

14 JUDGE WOODRUFF: His question was who would
15 be the legal representative of the Big Island Homeowners
16 Association to receive a subpoena?

17 MR. McELYEA: Well, it should be addressed
18 to the board and the officers of the association.

19 JUDGE WOODRUFF: Okay. And Mr. Weir, do
20 you know who that would be?

21 MR. WEIR: I believe that's three Folsom
22 Ridge representatives and two independent, allegedly
23 independent homeowners.

24 JUDGE WOODRUFF: Okay.

25 MR. COMLEY: We will sort that out later.

1 MR. WEIR: Rick Russo. I'm not for sure
2 who the third Folsom Ridge representative is. Now, I
3 believe Stan Zeldon and Dennis Boltz; is that correct?

4 MR. COMLEY: Your Honor, I think we can
5 sort out the appropriate custodian or other representative
6 to which a subpoena can be submitted when we get on to our
7 off the record portion here.

8 JUDGE WOODRUFF: Yeah. That was Mr. Comley
9 for Folsom Ridge, and he is correct that you'll have a
10 chance to do that informally. Right now we're having all
11 this transcribed, and we really don't need to have that
12 kind of discussion transcribed.

13 Anything else anyone wants to bring up
14 while we're still on the record? Then I'll give you a
15 chance to discuss this informally.

16 MR. COMLEY: Your Honor, I know that there
17 are other motions that Folsom Ridge has filed in
18 connection with this case, but we are not going to bring
19 them up on the strength of the Commission's representation
20 that those are stayed pending the conclusion of this
21 conference.

22 JUDGE WOODRUFF: That's correct. With
23 that, then, the on-the-record portion of this conference
24 is adjourned.

25