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APR 02 2007

**SURREBUTTAL TESTIMONY**

**OF**

**Missouri Public  
Service Commission**

**Cathy Orler**

**CASE NO. WC-2006-0082 & WO-2007-0277**

1 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

2 A. Cathy Orler. I reside at 3252 Big Island Dr., Roach Missouri 65787.

3 **Q. WHAT IS YOUR EMPLOYMENT EXPERIENCE?**

4 A. My employment experience is in: sales/sales management; business management/operations;  
5 business management consulting with areas of concentration in growth, performance, productivity,  
6 profitability and efficiency. I've been a business owner involved with mergers/acquisitions and  
7 sales.

8 **Q. WHY ARE YOU PROVIDING SURREBUTTAL TESTIMONY?**

9 A. "After nearly six years of ongoing controversy concerning my "non-membership" in the Big Island  
10 Homeowners Association, (BIHOA), (and the "creatively imposed fees" associated with this),  
11 between myself, and other residential property owners on Big Island, and Folsom Ridge, (F.R.), (the  
12 developer of Big Island,) with no resolve; and now the "threat" of a lawsuit for creatively imposed  
13 and erroneous back fees owed, I have been left with no choice, and therefore forced to file a Formal  
14 Complaint with the Public Service Commission."

15 The basis of my complaint is that the BIHOA is not operating as a Homeowners' Association (HOA)  
16 as per the Department of Natural Resources' (DNR), Regulations' Requirements of membership as  
17 cited in a letter from the DNR to F.R. to the attention of Reggie Golden - by servicing and/or billing  
18 users and non-users who are not members of the BIHOA; and therefore should be regulated as a  
19 public utility by the MPSC.

*Orler* Exhibit No. 3  
Case No(s) WC-2006-0082 & WO-2007-0277  
Date 2-28-07 Rptr xx

1 Furthermore, the BIHOA which is controlled by F.R. by a vote that is governed and dictated by the  
2 number of property lots owned as stated in the Article V – Association Membership and Voting  
3 Rights; Section 2 Voting Class of the Amended and Restated Declaration of Covenants and  
4 Conditions that were established in the year 2000 for the sole purpose of the operation and  
5 management of the water and sewer system as described in Article II, Section 1-C of the Amended  
6 and Restated Bylaws of the BIHOA, Inc. and the Amended and Restated Declaration of Covenants  
7 and Conditions. This was nearly two years after the issuance of a construction permit an operating  
8 permit by DNR and not in accordance with the DNR Regulation requirements of 10 CSR 20-  
9 6.010(3) (A). As a result, the following situations of non-members' fees issues exists:

10 In 1998, existing property owners on B.I. with their own private wells and septic systems and with  
11 other long established restrictive covenants already in place were solicited by F.R. LLC, the  
12 developer, to purchase water and sewer taps as a means to fund and cash flow their installation of a  
13 central water and wastewater system and the residents were then required to pay up front \$4800.00  
14 for sewer and \$2000.00 for water taps. This money was held in escrow at Central Bank in  
15 Camdenton, Missouri until completion of the system(s). Residents were told there would be no  
16 additional charges until which time they connected to the new system and they would have a  
17 guaranteed and reserved future right to connect to the system at a time of their choosing. There was  
18 no association, (i.e. HOA) in place as a functional and operational organization to oversee, maintain  
19 and operate the water and sewer utility system at the time the agreements were made and monies  
20 were exchanged and taps were purchased. No mention and/or disclosure of any membership  
21 affiliation requirements at any time was made and therefore no signatures were required and/or  
22 obtained. The current BIHOA which is the organization that later was created to manage the water  
23 and system, did not become operative until approximately two years later. The jurisdiction of the

1 DNR governing water and wastewater require that a permanent organization be in existence before  
2 commencing with the construction of the system. The BIHOA did not elect their first board  
3 members until December 29, 2000; again, nearly two years after the construction permit was issued  
4 by DNR. The BIHOA has been, has continued and is currently charging mandatory monthly fee  
5 assessments to non-members as follows:

- 6 1. Property owners who have paid for a water and/or sewer tap and by virtue of this  
7 have the future right to connect to the system, but are not presently connected to the  
8 system, and have NOT ratified the Amended and Restated Covenants and  
9 Conditions, and are NOT members of the BIHOA
- 10 2. Property owners who are not connected and are not receiving any services
- 11 3. Property owners who have NOT ratified the Amended and Restated Covenants and  
12 Conditions to mutually agree through bilateral consent to membership in the  
13 BIHOA, but are connected to the utility and receiving service(s)
- 14 4. Property owners who are connected to the utility system and who are receiving  
15 service(s)

16 Numerous attempts between resident property owners and F.R., controlling the BIHOA, to resolve  
17 this situation have been ongoing for nearly six years with no resolution. A "sense of urgency" has  
18 been created in that actual members of the BIHOA as a "continuing authority" will assume liability  
19 for the water and sewer system in September, 2005 and ownership of the system in September, 2006.

1 In addition, my concern, as well as the concerns of other resident property owners who are not  
2 members of the BIHOA is that F.R. controlling the BIHOA is currently trying to create, yet another,  
3 'new HOA' to overcome the "non-member" resistance in which all residents would be forced to  
4 become members. This 'new HOA' would replace the current BIHOA as well as all other existing  
5 HOA's, including the HOA of my subdivision which governs my property and in which I am already  
6 a member – and to which extent, I do not want to abandon or dissolve my membership and/or my  
7 HOA that are currently in place and have been in existence since the early 1960's when the island  
8 was first being developed.

9 Our concern is that this 'new HOA' is incorporating the present BIHOA and its specific function of  
10 the operation of the water and sewer system thus forcing residents through imposed membership to  
11 assume the financial and legal liability and responsibility for a water and sewer system which has  
12 proven to be 'sub standard' as per the Settlement Agreement between F.R., the developer, DNR and  
13 the Attorney General's Office and in violation of it's operating practices as set forth in this Formal  
14 Complaint. In addition, F.R., the developer, most recently expanded the original and present water  
15 system with a maximum capacity to service eighty homes off the island to include approximately  
16 160 acres of virgin development with no disclosures to its members and/or residents and in violation  
17 of DNR Regulation requirements by not obtaining a new construction permit from DNR and  
18 submitting engineered stamped and approved drawings for this purpose. Moreover, in documents of  
19 correspondence sent out to residents of Big Island on BIHOA letterhead and signed by the  
20 developers, they have assured residents that this concern has been addressed by committing to:  
21 "restricting the boundary of the area the system will serve to only include the Big Island Lake Sites,  
22 Big Island Lake Sites 1<sup>st</sup> Addition, Portage Park Unit 3, Portage Park Unit 1 and all other property on  
23 the island (peninsula) itself.....thus eliminating approximately 160 acres that is somewhat separate

1        anyway.” It is also questioned if this new and recent expansion of the current water system  
2        infrastructure to accommodate and service approximately 160 acres of F.R.’s future off island  
3        development has been presented to Camden County Planning and Zoning for approval?

4        In summary, and as a solution, I suggest that the MPSC request from BIHOA, and/or F.R. who is  
5        controlling the HOA, a listing of it’s customers and members:

- 6                        1. My name appearing as a customer and/or member of the BIHOA would undeniably  
7                        confirm that the BIHOA is not operating as an HOA, because I am neither a  
8                        customer nor a member (I do not receive any service nor have I signed any  
9                        documents to bilaterally consent and agree to membership, and therefore be subject  
10                      to the regulations of the BIHOA), yet I am being billed.
- 11                     2. My name being omitted from a listing of customers and members, also undeniably  
12                     confirms that the BIHOA is not operating as an HOA, because I am being billed  
13                     regularly by the BIHOA, and therefore my name should be appearing as a customer  
14                     and member, yet I am not a member of the association.

15        Therefore, the BIHOA is acting as an unlicensed public utility by providing service to non-members  
16        and should be regulated by the MPSC.

17        I realize that as per the MPSC guidelines for filing a Formal Complaint, this ‘Formal Complain’  
18        should include a listing of BIHOA members. However, this request to F.R. has been made numerous  
19        times by myself and other residents and continues to be ignored; I feel for the obvious reasons stated  
20        above in #1 and #2. However, to confirm with the MPSC, the integrity of my ‘Formal Complaint’ as  
21        well as maintaining the integrity and validity of the information contained herein, I will make a final,

1 written request to F.R. controlling the BIHOA for a copy of it's customers and members listing.  
2 This written request will serve as support documentation and verification for the MPSC, if again my  
3 request is ignored, that all efforts to obtain this listing were met with opposition and failed. If  
4 however, by come chance, my written request should be honored, then the basis of my 'Formal  
5 Complaint' as well as the guidelines for filing my complaint will have been satisfied.

6 The relief requested of the MPSC as a result of this 'Formal Complaint' is a temporary injunction  
7 halting the transfer of liabilities, both financially and legally, of the BIHOA water and sewer system  
8 to the actual members of the association as the continuing authority from F.R. on September, 2005  
9 and the transfer of ownership of the same on September 01, 2006; until a determination and ruling  
10 can be made by the MPSC as to the BIHOA and it's legal operation as an HOA, meeting all those  
11 requirements, or it's legal operations as a public utility, meeting all those requirements. As a result  
12 of this determination and ruling wherein the current water and sewer system of Big Island is  
13 operating as an unlicensed public utility and subject to regulation within the jurisdiction of the  
14 MPSC, the situation of member vs. non-member, non customers receiving service and/or being  
15 billed would be very clearly defined, and in affect, become moot and a 'non issue.'

16 Although this 'Formal Complaint' is being filed by me and bears only my signature, the situation  
17 cited herein, involves numerous residents and property owners on Big Island.

18 The assistance of the MPSC in resolving this ongoing controversy is very greatly appreciated.

19 **Q. WAS THIS RECENTLY WRITTEN AS A SURREBUTTAL TESTIMONY**  
20 **RESPONSE?**

1 A. No - this was my Formal Complaint submitted to the Missouri Public  
2 Service Commission, on August 18, 2005.

3 **Q. WHAT HAS CHANGED REGARDING THE ISSUES OF THE WATER AND SEWER**  
4 **UTILITY ON BIG ISLAND, SINCE THE FILING OF YOUR FORMAL**  
5 **COMPLAINT, NEARLY 19 MONTHS AGO?**

6 A. Nothing.

7 **Q. PLEASE EXPLAIN?**

8 A. 1. The BIHOA is continuing to operate as an unlicensed public utility by billing and servicing  
9 individuals who are not members, and/or not receiving any services

10 2. The developers, Mr. Reginal Golden and Mr. Rick Rusaw of Folsom Ridge, LLC, continue  
11 to own and control the BIHOA by an appointed majority representation of the board of  
12 directors and through the voting of lots within the association

13 3. The developer, Mr. Reginald Golden and Mr. Rick Rusaw of Folsom Ridge, LLC, continue  
14 to and are presently in violation of the Department of Natural Resources regulations in the  
15 construction, operations, management and administration of the utility

16 4. The developers, Mr. Reginald Golden and Mr. Rick Rusaw of Folsom Ridge, LLC continue  
17 to violate the provisions of their own Amended and Restated Covenants and Conditions and  
18 Bylaws governing the association

19 5. The developers, Mr. Reginald Golden and Mr. Rick Rusaw of Folsom Ridge, LLC continue  
20 to violate commitments made under signature to residents of Big Island

1       6.     The developers, Mr. Reginald Golden and Mr. Rick Rusaw of Folsom Ridge, LLC have  
2             continued to provide to the MPSC, DNR and the residents of Big Island information that is  
3             inconsistent, false and misrepresented throughout these proceedings before the Commission

4       7.     The 'new HOA' being created, as referenced in my Formal Complaint, is now known as the  
5             393 Companies with proven alliances towards the Developer as follows:

6             A. In communications from Ms. Holstead to residents, Ms. Holstead states, "...no customer  
7                who has filed complaints against the developer would serve on the first Board of  
8                Directors." In addition, in an e-mail sent to residents by Ms. Holstead, she asserts that  
9                she '....believes the PSC guidelines should instead provide one vote per lot which  
10              would allow the developer to maintain control over the utilities.' Also, Ms. Holstead can  
11              be quoted from another e-mail sent to residents as saying, 'I believe the developer who  
12              bore the cost of installing the utilities should not be forced to relinquish all control over  
13              those utilities....' Again, in Ms. Holstead's written testimony submitted at the Public  
14              Hearing in the complaint case held on June 2<sup>nd</sup>, 2006, Ms. Holstead testifies that she  
15              '....believes the PSC guidelines should be altered to allow one vote per lot instead of  
16              one vote per customer as I believe that is in the public's best interest.' Also, as a part of  
17              Ms. Holstead's testimony is her statement: 'there are those who believe Mr. Pugh,'  
18              (complainant and intervenor), 'will be satisfied by nothing less than a public hanging of  
19              the developer. PSC has become the rope.' Quoted statements made by Ms. Holstead  
20              prove a bias towards the developer.

21            B. The willingness of the 393 Companies to accept the water and sewer utility 'AS IS' and  
22              impose the financial and legal responsibilities and liabilities associated with this utility

1 on residents is questionable. This utility has a proven history to the present of  
2 substandard construction and improper operations; in my opinion, NO resident of Big  
3 Island should be forced to accept this utility 'AS IS,' and have the liabilities associated  
4 with it, forced upon them

5 C. The language of the 393 companies' Bylaws and the asset transfer agreement are not  
6 neutral with regard to the developer. This assessment is shared by other Complainants  
7 and Intervenors and confirmed by legal opinion.

8 D. The creation of a vote for a majority support of the 393 Companies is tied to a vote for  
9 the transfer of utility assets within the current BIHOA that is being owned and  
10 controlled by the Developer through the voting of lots

11 E. The 393 Companies' Board of Directors did NOT involve independent contractors,  
12 engineers, project managers or other residents as a part of the walk through inspection to  
13 ensure a neutral evaluation of the utility supported by professional expertise

14 Residents continue to object to the liabilities, both financially and legally, for a utility that has been  
15 proven substandard in its construction and operations being imposed on them through a mandatory  
16 membership in an HOA as an additional and conditional requirement to be able to receive utility  
17 service.

18 **Q. WAS YOUR INTENT IN FILING YOUR FORMAL COMPLAINT WITH THE MPSC**  
19 **FOR PUBLIC REGULATION OF THE UTILITY ON BIG ISLAND IN AN**  
20 **EFFORT TO AVOID BRINGING LITIGATION AGAINST THE INDIVIDUALS**

1       **YOU CONSIDERED TO BE YOUR NEIGHBORS AND FRIENDS IN THE BIG**  
2       **ISLAND COMMUNITY?**

3       A.     Yes.

4       **Q.     PLEASE EXPLAIN?**

5       A.     In my Formal Complaint I stated that regulation of this utility by the MPSC would make the issues of  
6       member and non-member moot.  Additionally, through regulation of this utility by the MPSC,  
7       customers of the utility would NOT be responsible or liable for the system's substandard  
8       construction and operations – quite simple really, as an alternative to litigation.

9       **Q.     CAN LITIGATION AGAINST THE 393 COMPANIES BE AVOIDED IF THE**  
10       **TRANSFER OF UTILITY ASSETS TO THE 393 COMPANIES BY THE MPSC**  
11       **IS APPROVED?**

12       A.     No.

13       **Q.     PLEASE EXPLAIN?**

14       A.     By approving the transfer of utility assets to the 393 Companies, the Commission will be facilitating  
15       litigation suits being brought against the 393 Companies, immediately, by those individuals who are  
16       objecting to the imposed membership in the 393 Companies as an additional and conditional  
17       requirement to be able to receive utility service and having the liabilities associated with this utility  
18       also being imposed through membership.

19       **Q.     DO YOU FEEL THAT THE INFORMATION PRESENTED BY MS. HOLSTEAD TO**  
20       **THE RESIDENTS OF BIG ISLAND WAS AN IMPARTIAL AND ACCURATE**  
21       **REPRESENTATION OF THE MPSC REGULATION TO ALLOW RESIDENTS TO**

1       **MAKE A TRULY INFORMED DECISION BETWEEN MPSC REGULATION AND**  
2       **393 COMPANIES?**

3       A.    No, I don't.

4       **Q.    PLEASE EXPLAIN?**

5       A.    In an email from Ms. Holstead sent to Big Island residents dated 05/10/2006, Ms. Holstead states the  
6       following: 'I am opposed to anything that will increase my utility costs and it is my understanding if  
7       our utilities are PSC regulated, there will be a substantial increase in the fee currently being charged  
8       for my water and sewer service.' However, in an email sent to Ms. Holstead , nearly 5 months  
9       earlier from Mr. Jim Merciel of the MPSC, Mr. Merciel makes the clarification to Ms. Holstead by  
10      stating: 'There seems to be a lot of talk regarding a regulated utility being substantially more  
11      expensive than other types of utilities, however, the only additional costs that regulated utilities  
12      directly incur is an annual assessment, which is approximately one and a half percent of revenue for  
13      water utilities and approximately 8% for sewer utilites....whatever rates you are paying today may or  
14      may not reflect the true cost of service.'

15      **Q.    DID MS. HOLSTEAD PRESENT TO RESIDENTS THE COST ASSOCIATED**  
16      **WITH REGULATION THAT WAS PROVIDED TO HER BY MR. MERCIEL?**

17      A.    I have no records to indicate that it was. However, as the opposition towards MPSC regulation  
18      advanced, Complainants were excluded from residential correspondences and meetings.

19      **REFERENCE REBUTTAL TESTIMONY OF PHIL HILEY**

20      **Q.    DOES MR. HILEY, IN HIS REBUTTAL TESTIMONY, CONFIRM THE**  
21      **VALIDITY OF MS. ORLER'S DIRECT TESTIMONY REGARDING MR. HILEY**

1        **APPROACHING COMPLAINANTS AND ASKING THEM TO USE THEIR FORMAL**  
2        **COMPLAINTS AS LEVERAGE TO REQUIRE FOLSOM RIDGE TO PROVIDE A**  
3        **CASH ACCOUNT TO THE 393 COMPANIES, IF THE COMPLAINANTS WOULD**  
4        **DROP THEIR COMPLAINTS?**

5        A.     Yes.

6        **Q.     PLEASE PROVIDE EXAMPLES .**

7        A.     On page 3, lines 13-23 and on page 4, lines 1-8 of Mr. Hiley's rebuttal testimony he confirms the  
8        validity of my direct testimony in that he did indeed approach the Complainants and asked that they  
9        use the leverage of their Formal Complaints against Folsom Ridge to require Folsom Ridge to  
10       provide a cash reserve account to the 393 Not For Profit Companies, if the Complainants would drop  
11       their Formal Complaints.

12       **Q.     HAS MR. HILEY PROVIDED OTHER TESTIMONY REGARDING THE FEES**  
13       **CHARGED TO NON-MEMBERS OF THE BIHOA, BY FOLSOM RIDGE OWNING**  
14       **AND CONTROLLING THE BIHOA?**

15       A.     Yes. In the Public Hearing held June 6<sup>th</sup>, 2006, Mr. Hiley testifies under oath, that: 'I did pay my  
16       quarterly fees that were billed by Folsom. So, I guess I'm a nonmember, I didn't sign the HOA. So I  
17       am a nonmember and a noncustomer. I still pay my fees.' '...as far as I'm concerned, people who  
18       didn't pay them, that's their choice.' 'I don't want my money back. If Reggie says I'll send your  
19       money back, Phil, I'll say I don't want it, just keep it in the system.'

20       **Q.     WHY IS MR. HILEY NOW ASKING COMPLAINANTS TO USE THEIR FORMAL**  
21       **COMPLAINTS AS LEVERAGE AGAINST FOLSOM RIDGE TO RETURN THE**

1 FEES CHARGED TO NONMEMBERS AS A CASH CONTRIBUTION TO THE 393  
2 COMPANIES, WHEN MR. HILEY HAS PREVIOUSLY STATED UNDER OATH  
3 THAT HE DOES NOT WANT HIS MONEY BACK?

4 A. I cannot answer why Mr. Hiley's statements under oath are contradictory.

5 Q. DOES MS. ORLER ACCEPT OR CLAIM OWNERSHIP OR RESPONSIBILITY  
6 FOR A GROUP REFERRED TO AS "CATHY ORLER'S GROUP ON PAGE 3,  
7 LINE 13; OR ON PAGE 4, LINE 8 AS "THE ORLER GROUP" THAT MR.  
8 HILEY MAKES REFERENCE TO IN HIS REBUTTAL TESTIMONY?

9 A. No. Ms. Orler does not accept nor claim ownership or responsibility for a group or any group, or any  
10 individuals that Mr. Hiley may make reference to as being associated with her by name.

11 Q. DOES MR. HILEY HAVE A CLEAR UNDERSTANDING OF SOME OF THE  
12 STATEMENTS HE HAS TESTIFIED TO IN HIS REBUTTAL TESTIMONY?

13 A. I don't believe he does.

14 Q. PLEASE IDENTIFY THOSE STATEMENTS.

15 A. On page 4, line 16, Mr. Hiley states: '....I then found out that she had filed some kind of lawsuit.'  
16 Mr. Hiley is incorrect in his understanding that I, filed a lawsuit. A group of 'Plaintiffs', including  
17 several individuals, as well as myself, filed a petition with 'claims against the assets of the utility.'  
18 Being Plaintiffs in the petition that was filed, direct conversation with any of the Defendants is not  
19 recommended and any discussions should be through the respective attorneys; as I cautioned to Mr.  
20 Pugh regarding the conversation he was having with Mr. Hiley.

1 Q. CAN YOUR STATEMENT REGARDING CONVERSATIONS BETWEEN PLAINTIFFS  
2 AND DEFENDANTS BE SUPPORTED WITH DOCUMENTATION?

3 A. Yes. CO Schedule 1, is an email received by Plaintiffs from Defendant, Ms. Holstead. My reply to  
4 Ms. Holstead confirmed receipt of her email and the forwarding of that correspondence to the  
5 attorney for the Plaintiffs.

6 Q. ON PAGE 3, LINES 22 AND 23, OF MR. HILEY'S REBUTTAL  
7 TESTIMONY, HE REFERENCES THE TELEPHONE CONVERSATION BETWEEN  
8 HIMSELF AND MS. ORLER. DO YOU THINK THAT MR. HILEY  
9 UNDERSTANDS THE VOTING PROCESS OF THE BIHOA?

10 A. No - I do not. As clearly presented in the previous questions and answers preceding, this question  
11 and answer. In Mr. Hiley's rebuttal testimony, on page 4, line 22 and 23, I asked Mr. Hiley if he  
12 knew that Folsom Ridge had total control of the asset transfer vote. His reply was: "...do you think  
13 I'm stupid?" Mr. Hiley asked and answered his own question.

14 Q. HAS MR. HILEY PROVIDED OTHER TESTIMONIES UNDER OATH, THAT  
15 INDICATE HIS LACK OF UNDERSTANDING REGARDING FOLSOM RIDGE'S  
16 CONTROL OF THE BIHOA, THROUGH THE VOTING STRUCTURE?

17 A. Yes. At the Public Hearing held on June 06, 2006, Mr. Hiley states; "I am treated as a member. I'm  
18 invited to the meetings and I'm allowed to vote."

19 Q. ON PAGE 5 OF MR. HILEY'S REBUTTAL TESTIMONY, LINES 9-13, MR.  
20 HILEY AGAIN QUESTIONS MS. ORLER ABOUT THE 'SUIT.' I WAS

1        **ASSUMING HE WAS REFERENCING THE PETITION FILED BY THE**  
2        **PLAINTIFFS. DO YOU THINK THAT MR. HILEY HAS A CORRECT**  
3        **UNDERSTANDING OF THE CLAIMS THAT WERE FILED AGAINST THE ASSETS**  
4        **OF THE UTILITY?**

5        A. No – I do not. Again, Mr. Hiley’s reply, referring to himself: “I must be stupid.” Again, Mr. Hiley  
6        has asked and answered his own question. Furthermore, the claims filed against the utility assets,  
7        would include the bank account that Folsom Ridge is planning to transfer to the 393 Companies. In  
8        addition, the Amended and Restated By-laws governing the BIHOA, specifically state in Article II –  
9        Purposes, Section 1. Item “h:” In the event of the dissolution of the corporation, members shall be  
10       entitled to any distribution or division of its remaining property or the net proceeds from the sale of  
11       corporate assets. This would include any bank account, that Folsom Ridge has committed to the 393  
12       Companies – this “remaining property,” must be distributed to members of the BIHOA.

13       **Q. IN MR. HILEY’S REBUTTAL TESTIMONY, HE STATES ON PAGE 5, LINES**  
14       **14 THROUGH 16, THAT HE IS “WITHDRAWING FROM ANY NEGOTIATIONS**  
15       **WITH THEM, (COMPLAINANTS), TO COME UP WITH SOME KIND OF**  
16       **SETTLEMENT.” HAD COMPLAINANTS ENTERED INTO NEGOTIATIONS WITH**  
17       **MR. HILEY TOWARDS A SETTLEMENT?**

18       A. No. However, on numerous occasions throughout the eighteen, (18), months that this case has been  
19       before the Commission, I and other Complainants have made attempts to discuss the utility issues  
20       with Mr. Hiley, in hopes of a possible resolve, but each time an effort has been made, the same  
21       result, as stated by Mr. Hiley above, has occurred.

22       **REFERENCE REBUTTAL TESTIMONY OF GAIL SNYDER**

1 Q. WOULD YOU LIKE TO CLARIFY ANY STATEMENTS MADE BY GAIL SNYDER  
2 IN HIS REBUTTAL TESTIMONY?

3 A. Yes. Mr. Snyder states that the 393 Companies are hiring the same management company that Mr.  
4 Gary Cover, receiver for other utilities in the lake area has hired. I would like to point out that this is  
5 a contract management position and that the direction and oversight of the person(s) and/or the  
6 company or organization responsible for the hiring of this individual and/or company is paramount in  
7 determining the level of performance that is expected and acceptable from this individual and/or  
8 company. In my opinion, the 393 Companies have not demonstrated an adequate understanding of  
9 the utility issues to possess the necessary 'business sense' required to effectively and efficiently own,  
10 operate, manage and administer a water and sewer utility and provide oversight and direction to other  
11 individuals.

12 Q. MR. SNYDER STATES IN HIS REBUTTAL TESTIMONY ON PAGE 5, LINES  
13 40-45 THAT MS. ORLER HAS NOT ATTENDED ANY MEETINGS OF THE 393  
14 BOARD OF DIRECTORS. IS THIS CORRECT?

15 A. Yes. I have never been invited to attend, or included in any of the meetings held, that involved the  
16 393 companies.

17 Q. DOES MR. SNYDER HAVE SUPPORT DOCUMENTATION TO PROVE HIS  
18 STATEMENT MADE ON PAGE 6, LINE 6, THAT "MS. ORLER IS  
19 SPEARHEADING THE PSC COMPLAINTS."

1 A. Mr. Snyder would NOT have any documentation to support an incorrect statement, such as this.  
2 MPSC documents prove that 9 individual Formal Complaints were filed with the MPSC.

3 Q. DOES MR. SNYDER INDICATE DIFFICULTY IN LOCATING 'FULL-TIME  
4 RESIDENTS WHO WERE WILLING TO SERVE' ON THE BOARD?

5 A. Yes - Page 6, lines 12-15.

6 Q. DID THE COMPLAINANTS MAKE MR. SNYDER AND MS. HOLSTEAD, AS  
7 WELL AS OTHER RESIDENTS AND THE MPSC, AWARE OF THIS POTENTIAL  
8 PROBLEM IN BEING ABLE TO RETAIN INDIVIDUALS WILLING TO SERVE  
9 ON A WATER AND SEWER UTILITY BOARD?

10 A. Yes. On June 6<sup>th</sup>, 2006, in the Public Hearing, Complainants prepared a handout for all individuals  
11 in attendance. CO Schedule 2. This handout outlined the fact that 'To the knowledge of the  
12 Complainants, there are no residents who are experienced in the management and operations of a  
13 water and sewer system who are willing and/or logistically or physically available to serve on an  
14 HOA board for this purpose.'

15 Q. MR. SNYDER ON PAGE 6, LINES 16-23 AND PAGE 7, LINES 24-29  
16 STATES: 'MS. ORLER SEEMS TO THINK THAT BECAUSE WE ARE  
17 COMMUNICATING WITH THE DEVELOPER'S ATTORNEY WE ARE BEING  
18 CONTROLLED BY THE DEVELOPER.' DID YOU MAKE THIS REFERENCE IN  
19 YOUR DIRECT TESTIMONY?

20 A. No, I did not. Until Mr. Snyder's rebuttal testimony statement, I was not made aware that the 393  
21 Companies were communicating with the developer's attorney; Correspondences sent to the island

1 residents regarding the 393 Companies and the transfer of assets have stated that negotiations have  
2 been with the developer. My direct testimony used numerous correspondence and direct quotes from  
3 these correspondences made by Ms. Holstead under signature to residents stating her convictions that  
4 the developer should control the utility.

5 **Q. MR. SNYDER STATES THAT THE 393 COMPANIES WILL BE RECEIVING**  
6 **FUNDS FROM THE BANK ACCOUNT OF THE BIHOA, AS A PART OF THE**  
7 **TRANSFER OF ASSETS. DO THE 393 COMPANIES HAVE A SPECIFIED**  
8 **AMOUNT IN WRITING, AND GUARENTEED BY SIGNATURE AND BOND?**

9 A. This was not indicated.

10 **Q. CAN THIS TRANSFER OF FUNDS FROM THE BIHOA BANK ACCOUNT TO THE**  
11 **393 COMPANIES TAKE PLACE?**

12 A. No, it cannot.

13 **Q. PLEASE EXPLAIN?**

14 A. First of all, Plaintiffs have filed a petition, with claims against the assets of the utility – this claim  
15 would include the assets of a bank account. Moreover, in the Amended and Restated By-laws of Big  
16 Island Homeowners' Association Inc., ARTICLE II – Purposes, Section 1; "H:" "In the event of the  
17 dissolution of the corporation, members shall be entitled to any distribution or division of its  
18 remaining property or net proceeds from the sale of corporate assets." Although the corporate assets

1 are being transferred, this transfer is in consideration of dollar amounts associated with future tap  
2 connections, and the corporation will be dissolved.

3 **Q. HAVE YOU MADE ALLEGATIONS THAT "393 PRESIDENT, PAM HOLSTEAD,**  
4 **IS BASICALLY UNFIT TO LEAD THE 393 COMPANIES?" (PAGE 9, LINES**  
5 **26 THROUGH 35 OF MR. SNYDER'S REBUTTAL TESTIMONY) .**

6 **A.** No, I have not. Mr. Snyder's testimony appears to have lost its objectivity to the issues, and resulted  
7 in emotional and subjective conclusions being rendered. I have asked, what qualifications, prior  
8 experience, and credentials, the individual board members have to enable them to adequately and  
9 responsibly, maintain and execute the duties and responsibilities of the positions of the offices they  
10 hold.

11 **Q. MR. SNYDER IN THIS SAME PARAGRAPH STATES: 'OBVIOUSLY, MRS.**  
12 **ORLER DOES NOT WANT A RESOLUTION WHICH IS NOT OF HER OWN**  
13 **MAKING.' DOES MR. SNYDER HAVE DOCUMENTATION TO SUPPORT THIS**  
14 **PUBLIC STATEMENT?**

15 **A.** No, he would not have anything to support a subjectively conclusive statement, such as this.  
16 However, the very fact that the issues of this utility are before the MPSC as a part of these  
17 proceedings, for a Final Determination and Ruling to be made by the Commission, would indicate  
18 that the resolution to the utility issues, is being made within the jurisdiction of the authoritative body  
19 known as the Missouri Public Service Commission, and NOT Ms. Orlor's own making - Ms. Orlor  
20 does NOT own the Commission.

**REFERENCE THE REBUTTAL TESTIMONIES OF JAMES MERCIEL AND MARTIN**

**HUMMEL**

**Q. DO YOU AGREE WITH MR. MERCIEL'S TESTIMONY ON PAGE 3, LINES 12**

**THROUGH 18, THAT BECAUSE "...MOST RESIDENTS BELIEVED THAT THEY,**

**IN EFFECT OWNED AND CONTROLLED THE UTILITY SYSTEMS, THOUGH I**

**BELIEVE THAT THE ASSOCIATION WAS ACTUALLY CONTROLLED BY**

**FOLSOM," ...THE CONCEPT OF THE 393 COMPANIES IN FACT PROVIDES**

**FOR CONTROL BY THE CUSTOMERS?"**

**A.** No – I respectfully disagree with Mr. Merciel. The incorrect perception of homeowners who thought that they were owning and controlling the utility systems, is NOT justification that they should actually be owning and controlling the utility systems. Specifically, the false misconceptions these same individuals have, regarding the reality of ownership and control of a utility, and being responsible and liable for its construction and operations, are NOT the realities of utility ownership and control. Folsom Ridge has subsidized the operations of this utility, therefore, these individuals who thought they, were owning and controlling the utility, were not exposed to the realities involved, and their preconceived thoughts are unrealistic. Incorrect perceptions and misunderstandings, do not justify or equate to, or ensure the success of a homeowner owned utility, in reality.

**Q. WHAT IS YOUR OPINIION OF MR. MERCIEL'S STATEMENT: 'THE 393 COMPANIES, AS NON REGULATED ENTITIES, HAVE FLEIBILITY WITH**

1       REGARD TO HOW THEY MAY WISH TO HANDLE THESE ISSUES, IF AT  
2       ALL?'

3   A.   Mr. Merciel is correct in this statement – this “flexibility,” is the exact result of Formal  
4       Complaints being filed with the PSC regarding this utility and its substandard construction  
5       and operations; too much flexibility, and not enough regulation, has resulted in the very  
6       issues before the Commission today. The utility issues of Big Island, have been ongoing for  
7       nine, (9), years; “the flexibility with regard to how they may wish to handle these issues, if  
8       at all,” demonstrates the need for regulation to address, correct, and finally resolve these  
9       issues.

10   REFERENCE THE AMENDED AND RESTATED COVENANTS AND CONDITIONS AND  
11   THE AMENDED AND RESTATED BY-LAWS OF THE BIG ISLAND HOMEOWNERS’  
12   ASSOCIATION, INC.

13   Q.   DO THE AMENDED AND RESTATED COVENANTS AND CONDITIONS  
14       AND THE AMENDED AND RESTATED BY-LAWS GOVERN AND CONTROL THE  
15       OPEARATIONS OF THE BIHOA?

16   A.   Yes.

17   Q.   WAS THE “NOTICE OF SPECIAL MEETING OF BIG ISLAND HOMEOWNERS  
18       WATER AND SEWER ASSOCIATION, INC.,” TO NEGOTIATE TO

1 CONCLUSION THE TRANSFER OF ALL OF THE ASSOCIATION'S RIGHT,  
2 TITLE AND INTEREST IN AND TO THE WATER AND SEWER SYSTEMS  
3 SERVING BIG ISALND TO THIRD PARTIES, AND TO TERMINATE OR  
4 MODIFY THE CURRENT RESTRICTIVE COVENANTS OVER WHICH BIHOA HAS  
5 OVERSIGHT, A LEGITIMATE OR LEGAL MEETING?

6 A. No - it was not.

7 Q. PLEASE EXPLAIN.

8 A. The Amended and Restated By-laws of the BIHOA, require a thirty, (30) day notice to be given to  
9 the corporation membership. Article X -- Meetings of the Membership, Section 2 and 3.

10 Section 2. It shall be the duty of the secretary of the Board of  
11 Directors to cause a notice of each annual meeting to be given to  
12 each corporation member by mailing a notice to the home post  
13 office address of each member as shown by the records of the  
14 corporation at least thirty (30) days prior to any annual meeting  
15 which shall give the hour and place of the meeting.

16 Section 3. Special meetings of the corporation membership may be  
17 held from time to time whenever called by the President of the  
18 Board of Directors by a majority of the Board of Directors. A  
19 special membership meeting shall be called at any time by the  
20 President or Vice-President upon the written request or petition  
21 of one-third or more of the corporation members. Notice of any

1      special meeting indicating briefly the object or objects thereof  
2      shall be given by the secretary to each and every member in the  
3      same manner as provided for the giving of notice for each annual  
4      meeting.

5      **Q.    WAS THERE A 30 DAY NOTICE OF THIS SPECIAL MEETING GIVEN TO**  
6      **THE CORPORATION MEMBERSHIP?**

7      A.    No – there was not.

8      **Q.    PLEASE EXPLAIN.**

9      A.    The letter of notification sent by Mr. Reggie Golden to the corporation members, of the Monday,  
10      January 29, 2007 special meeting, was dated December 26, 2006. The envelope delivered by the  
11      U.S. Postal Service, containing this letter of notification, was postmarked January 18, 2007 PM 2 T.  
12      CO Schedule 4.

13      **Q.    HOW CAN THIS BE EXPLAINED?**

14      A.    The date on the letter of notification by Mr. Reggie Golden, can be “back-dated.” U.S. Postal  
15      Service postmarks, can not be altered.

16      **Q.    WHAT DOES THIS MEAN?**

17      A.    This meeting was NOT legal or legitimate. Therefore the vote within the meeting to transfer the  
18      utility assets, dissolve the corporation, and poll a majority support for the 393 Companies, was NOT  
19      legal or legitimate.

20      **Q.    CAN YOU EXPAND ON THIS ISSUE?**

1 A. Yes – as previously mentioned in my Direct Testimony and my Rebuttal Testimony, this lack of  
2 notice, combined with the fact that the bylaws of the 393 Companies and the Asset transfer  
3 agreement, were only made available to residents three, (3), days prior to the vote that was held at the  
4 special meeting of the BIHOA. Therefore, residents were NOT allowed to cast an informed vote.

5 **Q. ARE THERE OTHER ISSUES CONCERNING THE VOTE TO TRANSFER ASSETS**  
6 **THAT WAS CONDUCTED?**

7 A. Yes. As stated in my Direct Testimony and my Rebuttal Testimony, the voting process, as well as  
8 the tabulation of the votes, are also in question. The validity concerning the voting process and the  
9 tabulation of the votes, was immediately expressed to PSC staff personnel, Dale Johansen and Jim  
10 Merciel, in an exchange of E-mails between Complainants, Cindy Fortney, Benjamin Pugh, and  
11 myself, and included, Lewis Mills, (Office of Public Counsel). The developer, Folsom Ridge,  
12 controls the vote of the BIHOA, by the voting of lots. At the Special Meeting, Folsom Ridge voted  
13 approximately 250 lots; there are only approximately 104 Big Island property owners. Therefore, no  
14 property owner on Big Island, member or nonmember in the BIHOA, had control over the vote to  
15 transfer their utility assets – except the property owner members, Folsom Ridge. In addition, the poll  
16 to determine a majority support for the 393 Companies, was tied to the vote to transfer the assets of  
17 the utility. Both issues appeared on the same ballot proxy, therefore making this vote also not  
18 legitimate. Furthermore, as previously stated in my other testimonies, as well as stated earlier in this  
19 testimony, residents were not provided copies of the 393 Companies' by-laws or the asset transfer  
20 agreement. The 393 Companies' by-laws were made available to only those individuals with internet  
21 access, three, (3), days prior to the vote. Moreover, Ms. Holstead's misrepresented cost of a  
22 regulated utility, and her portrayal of water meters associated with PSC regulation, suggests that the

1 information that was provided to residents was prejudiced. Residents were not allowed to cast an  
2 informed vote. In an E-mail dated May, 11, 2006, sent to residents by Ms. Holstead, Ms. Holstead  
3 stated to residents: "If it is decided that our utilities are going to be PSC regulated, I strongly oppose  
4 any requirement by the PSC that water meters be required for each household. This would be an  
5 additional unnecessary and unwarranted expense that would ultimately be charged back to each  
6 homeowner."

7 **REFERENCE TESTIMONIES OF MICHAEL T. MCDUFFEY**

8 **Q. WHAT TESTIMONIES PROVIDED BY MR. MCDUFFEY, WILL YOU BE**  
9 **REFERENCING?**

10 A. The first testimony I would like to reference is the June 6<sup>th</sup>, 2006 live testimony provided by Mr.  
11 McDuffey at the Public Hearing held in Camden County.

12 **Q. SPECIFICALLY, WHAT PORTION OF MR. MCDUFFEY'S TESTIMONY WILL**  
13 **YOU BE MAKING REFERENCE TO?**

14 A. Those statements regarding the water sampling performed by Mr. McDuffey at the Big Island utility.

15 **Q. WHAT ARE THOSE STATEMENTS?**

16 A. The following are statements made by Mr. McDuffey, regarding water sampling: "I'm currently the  
17 operator in charge of the drinking water system for Big Island. I tested water from any number of  
18 different homes in this system. They have all been good. I don't know what the group means when  
19 they're saying that there's been samples illegally or not properly. All the drinking water samples

1 for our history, however long I've been doing it, and the wastewater have been in compliance with  
2 the Department of Natural Resources regulations."

3 Q. WHEN QUESTIONED ABOUT NOTICES OF VIOLATION SENT TO FOLSOM  
4 RIDGE FROM THE DNR REGARDING ISSUES THAT WOULD BE WITHIN MR.  
5 MCDUFFEY'S AREAS OF RESPONSIBILITY HE WAS ASKED IF HE WAS  
6 MADE AWARE OF THOSE VIOLATIONS. WHAT WAS HIS RESPONSE?

7 A. Mr. McDuffey replied: 'Yeah. We would probably get that before Folsom.'

8 Q. WHEN ASKED IF MR. MCDUFFEY WAS AWARE OF NOTICES OF VIOLATIONS  
9 OF MISSOURI SAFE DRINKING WATER REGULATIONS ISSUED TO MR.  
10 REGGIE GOLDEN OF FOLSOM RIDGE ON JUNE 28<sup>TH</sup>, 2005, BY CYNTHIA  
11 S. DAVIES, CHIEF WATER SECTION OF THE DNR, WHAT WAS HIS  
12 RESPONSE?

13 A. "I am not aware of what you mean by improper water sampling, ma'am. I really don't. I'm sure that  
14 have a copy of that letter."

15 Q. WHAT WERE THE VIOLATIONS OF THE MISSOURI SAFE DRINKING WATER  
16 REGULATIONS ISSUED TO MR. REGGIE GOLDEN OF FOLSOM RIDGE?

17 A. 1. The public water system failed to collect routine samples from the distribution system as required  
18 by the Safe Drinking Water Regulation 10 CSR 60-4.020(1)  
19 2. The public water system dispensed water without obtaining a written permit to dispense water in  
20 violation of Safe Drinking Water Regulation 10 CSR 60-3.010

1 3. The public water system failed to develop a written total coliform bacteria sample site sampling  
2 plan as required by Safe Drinking Water Regulation 10 CSR 60-4.020(1)(A)

3 4. The public water system failed to obtain written authorization from the department prior to  
4 construction, alteration, or extension of the water system in violation of Safe Drinking Water  
5 Regulation 10 CSR 60-3.010(1)

6 5. Also noted were the following deficiencies, that the public water system should give serious  
7 consideration to correction. The deficiencies are not normally subject to enforcement action unless  
8 the department determines that these are contributing to the failure of the public water system to  
9 provide an adequate volume of safe water to customers at sufficient pressure.

10 a. The well casing was not protected against physical damage as required by the Design  
11 Guide, Part 3.2.7.3.a.7.

12 b. Each service connection is not individually metered as recommended by Design Guide,  
13 Part 8.10.

14 **Q. WHAT OTHER TESTIMONY PROVIDED BY MR. MCDUFFEY WOULD YOU LIKE**  
15 **TO ADDRESS?**

16 **A.** I would like to address the surrebuttal testimony provided by Mr. McDuffey in case no. WA-2006-  
17 0480.

18 **Q. WHAT STATEMENTS WERE MADE BY MR. MCDUFFEY REGARDING THE**  
19 **NOTICES OF VIOLATIONS ISSUED ON JUNE 28, 2005?**

1 A. Mr. McDuffey testifies: "Ms. Orlor's testimony on this prompted me to review the records in our  
2 offices, and it appears that there was no notice of violation in June of 2005 about a site sampling  
3 plan." "My laboratory regularly collected the samples required and had submitted the sample siting  
4 plan to DNR on a timely basis. DNR had misplaced the records of the sampling and the sampling  
5 siting plan."

6 Q. DID MR. MCDUFFEY ALSO ADDRESS THE FACT THAT THE SYSTEM HAD  
7 NOT OBTAINED A WRITTEN PERMIT TO DISPENSE WATER?

8 A. Yes – he stated: "It was true that none had been applied for at that time."

9 Q. CAN YOU PROVIDE SUPPORT DOCUMENTATION AS EVIDENCE TO SUPPORT  
10 THE STATEMENTS IN YOUR SURREBUTTAL TESTIMONY?

11 A. Yes – this will be provided at the Formal Evidentiary Hearing.

12 Q. DO YOU AGREE WITH THE SURREBUTTAL TESTIMONY OF MR. BENJAMIN  
13 D. PUGH?

14 A. Yes – I do.

15 Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

16 A. Yes.

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

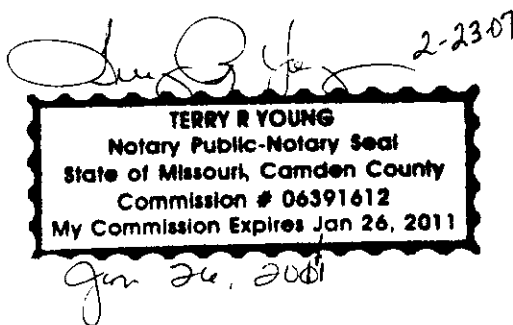
In the Matter of Folsom Ridge, LLC Owning and )  
Controlling the Big Island Homeowner Association. )  
and the Application of Folsom Ridge and Big )  
Island Homeowners Water and Server Association )  
Inc. for an Order Authorizing the Transfer and )  
Assignment of Certain Water and Sewer Assets to )  
Big Island Water Company and Big Island Sewer )  
Company, and in Connection Therewith Certain )  
Other Related Transactions.in an Unincorporated  
Area of Camden County, Missouri

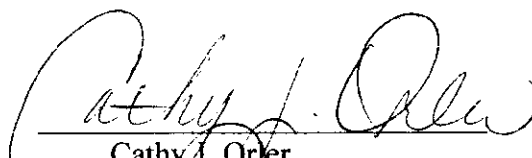
Case Nos. WC-2006-0082  
& WO-2007-0277

AFFIDAVIT OF [CATHY J. ORLER]

STATE OF MISSOURI       )  
                                      )  
COUNTY OF CAMDEN       )       ss. 497-58-4300

Cathy J. Orler, of lawful age, on her oath states: that she has participated in the preparation of the foregoing Testimony in question and answer form, consisting of 37 pages to be presented in the above cases; that the answers in the foregoing I Testimony were given by her; that she has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of her knowledge and belief.



  
Cathy J. Orler