

TESTIMONY  
OF  
Benjamin D. Pugh  
CASE NO. WA-2006-0082 & WO-2007-0277

Pugh Exhibit No. 4  
Case No(s) WC-2006-0082 et al  
WO-2007-0277  
Date 2-28-07 Rptr ++

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Missouri Public  
Service Commission

1 Q. PLEASE STATE YOUR NAME AND ADDRESS.

2 A. Benjamin D. Pugh, 1780 Big Island Drive, Roach, Missouri 65787.

3 Q. BRIEFLY WHAT IS YOUR EMPLOYMENT BACKGROUND?

4 A. 4 years in the US Navy and 33 years with Trans World Airlines (lead electrician)

5 Q. WHAT IS YOUR INTEREST IN BIG ISLAND?

6 A. My wife and I have been property owners on Big Island for 44 years. We have been full time  
7 residents since my retirement in 1986. I am very concerned that the growth of Big Island be a  
8 responsible and safe growth for its residents. Since Folsom Ridge came in 1998 there has been  
9 little consideration for the existing residents of Big Island or their health risks.

10 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

11 A. I filed a formal complaint case # WC 2006 0090 against Folsom Ridge, LLC owning and operating  
12 Big Island Home Owners Association (BIHOA). Mr. Golden and Mr. Rusaw created Big Island  
13 Water & Sewer Co. Inc. aka Folsom Ridge in response to those complaints. This testimony  
14 emphasizes many major violations by Folsom Ridge; but nothing could make my case any better  
15 than a statement under oath by homeowner Phil Hiley at the Camdenton, Mo. June 2, 2006 public  
16 hearing, stating: "Mr. Golden lets me vote even though I'm not a member". Is this the type of  
17 management skills we want to operate these complex sewer and water utilities? The Big Island  
18 Sewer and Water systems needs to be regulated. by the Public Service Commission. as each user is  
19 a customer only and it requires no membership. for the homeowners. A regulated system is the  
20 logical solution to the membership problem. A 393 Not for Profit Corp. as proposed by many Big  
21 Island homeowners does not address the membership problem as stated in my complaint; and could  
22 creat some possible litigation which I'm sure would not be advantageous to anyone.

1 I am not a member of the BIHOA. I have not ratified the covenants or Bylaws; however I do  
2 receive sewer service. Two attorneys, (Mr. Lewis Bridges and Mr. John Walker) I have consulted  
3 agree that I have made no commitments to be a member without my signature I do attend the  
4 meetings since the meetings affect my service; however, since I am not a member I do not vote, as it  
5 would not be legal or ethical. I do pay my service charges on a timely manner.

6 **Q. WHY ARE YOU OPPOSED TO THE DEVELOPERS OWNING AND OPERATION**  
7 **THE SEWER AND WATER SYSTEMS WITHOUT REGULATION?**

8 **A.** Regardless of what name they use, the owners and operator are still Mr. Golden & Mr. Rusaw. My  
9 concerns started on April 23, 1999 when I was informed that the Department of Natural Resources  
10 (DNR) was on Big Island issuing violations for improper installation practices on the sewer and  
11 water system by Folsom Ridge LLC, (i.e. Mr. Golden and Mr. Rusaw). It was disappointing to  
12 many homeowners that this violation had occurred.. Notice of Violation # 1315 JC issued May 25,  
13 1999. Residents started investigating and learned that Folsom Ridge was not only issued  
14 violations for improper installation; but by their own admission Folsom Ridge had installed 4600  
15 feet of pipes with sewer and water pipes in the same trench without a construction permit from the  
16 DNR. These violations appeared, not accidental, but intentional as/per a letter written November  
17 22, 1998 by Jim Jackson (Folsom Ridge Project Engineer) to Breck Summerford P.E. (DNR Chief  
18 Engineering and Compliance Section, Public Drinking Water Program). Mr. Jackson, representing  
19 the developers, requested "a permit be issued for the construction on the lines in the same trench  
20 including the lines already constructed." Even after Mr. Summerford properly denied this request  
21 by Folsom Ridge, they continued to disregard DNR orders, and installed the complete system in an  
22 unsafe manner, with the water and sewer mains in the same trench. This was only the start of 8  
23 years of continual and repeated violations of the State of Missouri permits, regulations and codes.

24 **Q. WAS IT FOLSOM RIDGE THAT BROUGHT THESE IMPROPERLY INSTALLED**  
25 **LINES TO THE ATTENTION OF THE DNR?**

1 A No, it was due to the complaints of several homeowners that the systems were not installed according  
2 to Missouri regulations and codes. In fact under individual signatures, Folsom Ridge insisted to  
3 residents that the water and sewer systems were installed properly. The homeowners complaints  
4 included many meetings with the DNR. Two meetings included Dr. Wayne Cooper MD., Mo. State  
5 Representative Dist 155, who had concerns for the alleged health issues on Big Island. DNR  
6 personnel Breck Summerford, John MacEachen, Elena Seon, Clinton Finn, Mike Tharpe, Mary  
7 Ann Retten, Keith Forck, Steve Jones, and Tim Neal attended various meetings with concerned  
8 homeowners of Big Island. Folsom Ridge did not attend any of these meetings.

9 Q. **WHEN DID THE DNR DETERMINE AND CONFIRM THAT THE SYSTEM WAS**  
10 **IMPROPERLY INSTALLED?**

11 A. . The original systems were proved to be in non-compliance by the test diggings, which were done  
12 at the insistence of concerned homeowners on January 12, 2004. That DNR test resulted in a  
13 Settlement Agreement (SA) between Folsom Ridge, DNR and the Attorney General Offices to  
14 correct the improper installation. Folsom Ridge was fined \$8000, which they paid. There are still  
15 many questionable reinstallation practices that do not conform to a water system free of  
16 unnecessary health risks. Additionally, in my opinion, the following are existing problems as of the  
17 writing of this testimony.

18 **Sewer and water valve and lines together**

19 There are Sewer and water valves in the same upright with mere inches separation. There are  
20 sewer and water lines in the same trench.

21 **Shutoff valves**

22 Only one home on the causeway has a shut off valve, (Haddock home) in an upright  
23 coming off the main line to the home service line. Other homes which have purchased a

1 tap, other than those on the causeway, have a shutoff valve at or near the property  
2 easement.

### 3 Causeway water main reinstallation

4 The relocated water main is on the lower road level, with the sewer main on the upper  
5 private road with water service line extensions crossing perpendicular over the sewer main  
6 without sleeving. Logic would tell me that the sewer main should have been relocated to  
7 the lower level, and the water main should have remained in place in the upper private  
8 road. As it is currently installed any sewage leakage could gravity drain to the lower water  
9 main and contaminate the soil surrounding the newly installed potable water main pipe.

10 The causeway water main is at the lowest elevation of the complete system.

### 11 Missouri Dept of Health chart

12 The Missouri Dept. of Health chart states: A public water supply well should be a  
13 minimum of 300 feet from sewage tanks, disposal area, or lagoons. Big Island separation  
14 between the well and the sewer filter bed is approximately half of the 300 foot minimum.  
15 Why was the well and filter bed separation recommended by the Health Dept. and Folsom  
16 Ridges own project engineer Jim Jackson not in compliance? The DNR approved the close  
17 proximity of the well and the filter bed. It appears that the two State Departments have  
18 conflicting minimums with the DNR minimum increasing the risk of drinking water  
19 contamination on Big Island. Leaks can and do occur around the filter bed. Example: On April 20,  
20 2001 while digging a trench in his yard, homeowner Duane Stoyer's ditch filled with contaminated  
21 water. This contaminated water pool was well above the elevation of his septic system. The  
22 Camden County Sewer Dept was called. They took samples of the polluted water and sent them to  
23 McDuffy Lab for analysis. (10,909 fecal coliform per 100 mi) Pictures were taken along the road  
24 directly above the Stoyer home, of sewage water months after the first discovery on April 20 2001.

1 Mr. Stoyer's home is located directly below the filter bed on the lakeside of Big Island Drive. A  
2 break in a 4-inch sewer line, buried only inches below the ground surface, was finally located  
3 adjacent to the filter bed and repaired four months later. I would have preferred my friend was  
4 telling his own story; but Mr. Stoyer died of kidney cancer on April 9, 2006 before his story could  
5 be told. In his complaint WC2006-0129 to the commission dated 9-26-2005, Mr. Stoyer stated "I  
6 am presently under medical treatment fighting kidney cancer. My cancer might have been caused  
7 by the raw sewage running into the lake as I, like most residents of the lake, was quite active in and  
8 around the water at the same time this took place."

9 **Q. YOU HAVE MENTIONED THERE HAVE BEEN MANY VIOLATION AND**  
10 **UNSATISFACTORY INSTALLATION PRACTICES WITH THE SEWER AND**  
11 **WATER LINE ON BIG ISLAND. WOULD YOU BE MORE EXPLICIT?**

12 **A** Below are many of which I am aware:

- 13 1. Folsom Ridge (FR) received a violation review #31182-98 for installation of 4600 feet  
14 of sewer and water line in the same trench without a permit from the Dept. of Natural  
15 Resources. November 19, 1998. (2)
- 16 2. FR received a notice of Violation # 1315 JC by the DNR for failure to construct water  
17 lines in accordance with approved plans May 25, 1999. (1)
- 18 3. FR received a notice of Violation by the Camden County Road and Bridge Department  
19 for digging up a utility crossing to repair a leaking sewer line, not installed in a sleeve,  
20 which tore up new asphalt without a permit. (9-26-2000) (12)
- 21 4. Folsom Ridge received a DNR notice of Violation JC 011193 for improper disposal of  
22 old roofing near the wastewater treatment plant and public water well. September 26,  
23 2000. They were required to correct this improper disposal. (13)

1 5. Settlement Agreement (SA) required Folsom Ridge LLC to correct the violations  
2 observed during the digging of the test pits on January 12, 2004. The test diggings  
3 proved that the water and sewer lines had been improperly installed per DNR  
4 regulations. Folsom Ridge LLC violated # 15 of that agreement in 2005.

5 6. DNR inspection March 18, 2005: Four unsatisfactory features recommended for  
6 correction: (14)

7 a. It does not appear that bedding material is being used on the service lines as shown  
8 on the approved revised plans.

9 b. Not all the water mains conform to the location as shown on the approved revised  
10 plans. There appears to have been a change in alignment of a portion of the four-  
11 inch main. Please submit as-built plans that provide the location and size of all  
12 water lines valves and hydrants for this extension.

13 c. There were a few water line valves that were not accessible because the valves  
14 were covered with mud and water inside of the valve box.

15 d. There are a few locations where the new service lines valve boxes for the water  
16 is less than 10 feet (10) from the existing sewer line valve boxes.

17 7. Notice of Violation #11210SW by the DNR for causing or permitting the construction,  
18 installation or modification of the community public water supply without written  
19 authorization by extending Phase one water main off the island to the Island View  
20 Estates. (15)

21 8. The DNR issued a series of violations of the Missouri Safe Drinking Water  
22 Regulations: (16)

1 a. The public water system utility failed to properly collect routine samples from the  
2 distribution system as required by the Safe Drinking Water Regulation

3 10 CSR 60-4.020(1).

4 b The public water system utility dispensed water without obtaining a written  
5 permit to dispense water in violation of the Safe Drinking Water Regulation

6 10 CSR 60-3.0103.010

7 c. The public water system utility failed to develop a written total coliform bacteria  
8 sample-siting plan as required by Safe Drinking Water Regulation

9 10 CSR 60- 4.020(1)(A).

10 d. The public water system utility failed to obtain written authorization from the  
11 department prior to the construction, alteration, or extension of the water system,  
12 in violation of safe drinking water regulation 10 CSR 60-3.010(1). June 28 2005.

13 **Q. HAVE YOU EVER BEEN INTIMIDATED OR ASSAULTED BY ANY PARTNER OF**  
14 **FOLSOM RIDGE LLC?**

17

15 **A.** Yes, David Lees, a partner of Folsom Ridge at the time, made several attempts to physically harass  
16 not only me, but also other members of the "Concerned Homeowners", a committee formed to  
17 represent over 20 homeowners on Big Island. This committee was organized for the purpose of  
18 negotiating covenants and bylaws with Mr. Golden for the betterment of the homeowners.  
19 Other members of this committee had instances where Mr. Lees would swerve his truck to  
20 intimidate us as we were walking on the county road. On one of these instances, May 19, 2000, Mr.  
21 Lees came so close to me with his truck that I thought he would hit me as well as my two dogs I had  
22 on leash.. I reported that incident to the Camden County Sheriff's office. May 19, 2000. Complaint

1 #YR 00-1315. My second incident with Folsom Ridge partner David Lees was on May 9, 2001. I  
2 was taking pictures of Mr. Lees and crew working on a reported leak 19 days after the leak was  
3 reported.. Mr Lees was noticeably irritated and on June 19, 2001, I was physically assaulted with  
4 his fist to my jaw with the threat; "I am going to sue you for invasion of my privacy". This incident  
5 was also reported June 19, 2001 as an assault 3<sup>rd</sup> degree, complaint # YR01-1567 and acted on by  
6 the Sheriff dept. and the Offices of the County Prosecuting attorney. In this case I was only  
7 seeking damages for dental work, (a crown and tooth pulled) and received that relief settling out  
8 of court through the efforts of the Camden County Prosecuting Attorney. Many months prior to  
9 these incidents I received a visit from Mr. Larry Toombs, telling me he was only the messenger for  
10 David Lees who wanted me to know that David Lees intended to sue me for my involvement  
11 with the residents who were dissatisfied with the installation of our new sewer and water system.

12 **Q. MR. PUGH , YOU HAVE BEEN CONSISTENTLY CRITICIZED FOR NOT JOINING THE**  
13 **BIHOA AS YOU ARE CONNECTED TO THE SEWER SYSTEM . WOULD YOU**  
14 **EXPLAIN THE REASONS FOR NOT BECOMING A MEMBER AT THE TIME OF**  
15 **YOUR CONNECTION IN NOVEMBER ,1999?**

16 **A.** There was no HOA to join. Again it is impossible to join something that doesn't exist. I was not asked  
17 to join anything at the time of my \$4800 deposit for sewer service at the Central bank escrow  
18 account on January 15,1999. There was no HOA to join at the time I connected to the system  
19 in November 1999 . BIHOA covenants and bylaws were not voted on until December 29, 2000. 14  
20 months after I was connected to the system. By that time it was common knowledge on Big Island  
21 that the systems were illegally installed.. Knowing of this systems potential liabilities, I chose not to  
22 become a member. My agreement with Folsom Ridge was that I could connect at any time of my  
23 choosing and there would be no charge until I received services.

24 **Q. IS A 393 NOT FOR PROFIT COMPANY THE BEST SOLUTION FOR BIG ISLAND?**



1 A. No. There are previous commitments and agreements by Folsom Ridge with the homeowners which  
2 are in conflict with the Statues of a 393, which requires that all users of the system must be  
3 members.

4 **Q. WERE YOU GIVEN A SET OF THE 393 BYLAWS TO STUDY BEFORE MAKING A**  
5 **DECISION ON THE VALUE OF A 393 NOT FOR PROFIT CO TO OPERATE THE**  
6 **SEWER AND WATER SYSTEM ON BIG ISLAND?**

7 A. No., There was a copy put on the internet a couple days before voting took place. The bylaws are  
8 quite lengthy and it was impossible to study this complex document in such a short period  
9 before it was brought to a vote. This was an important vote for the residents of  
10 Big Island. There were many that didn't have access to the internet and  
11 therefore haven't seen a copy of the bylaws. Even those of us that did have  
12 access to the internet were not given sufficient time to study before the vote was taken.

13 **Q. MR. PUGH, SINCE YOU WERE CONSIDERED A MEMBER OF THE BIG**  
14 **ISLAND SEWER & WATER INC AND WERE SENT A BALLOT FOR THE**  
15 **JANUARY 29, 2007 VOTE, (RELATED TO THE TRANSFER OF ASSETS TO THE**  
16 **393 AND ACEPTANCE BY THE 393) , DID YOU EXERCISE YOUR RIGHT TO**  
17 **VOTE?**

18 A Even though I am considered a member by Folsom Ridge I have not ratified any covenants or bylaws  
19 and consider myself a customer as I am connected to the sewer system. I consider myself a non  
20 member and didn't vote on that ballot. Another ballot was circulated for non members and I voted  
21 on the non member ballot. I understand that ballot was not counted . The vote was a moot point as  
22 the count was by lots and not as , "one member one vote" . It would be important to know how  
23 many votes were by actual members who had ratified the covenants and bylaws. The intervenors

1 and the commission have tried on many occasions with data requests to get accurate information  
2 from Folsom Ridge .

3 **Q. WOULD A 393 NOT FOR PROFIT CO. GIVE THE COMPLAINANTS THE RELIEF**  
4 **THEY REQUESTED IN THEIR 9 COMPLAINTS TO THE PUBLIC SERVICE**  
5 **COMMISSION 18 MONTHS AGO?**

6 **A.** No.. There are many objections to the bylaws including the 393 members being required to  
7 accept the liabilities created by Folsom Ridge over the past 8 years. Accepting the Sewer and  
8 Water system "AS IS" in my opinion is more liability than I would be agreeable to. With a  
9 sewer and water system regulated by the Public Service Commission, these liabilities would  
10 remain with the people that created them., under regulation and a watchful eye by the  
11 commission.

12 **Q. DO YOU HAVE DOCUMENTATION TO SUPPORT THIS TESTIMONY?**

13 **A.** Yes.

14 **Q. IS ANY OTHER INTERVENOR GIVING TESTIMONY?**

15 **A.** Yes

16 **Q. ARE YOU IN AGREEMENT WITH THE OTHER INTERVENORS SUBMITTING**  
17 **TESTIMONIES?**

18 **A.** Yes, I'm in agreement with Ms. Orlers and Ms. Fortney's testimonies.

19 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

20 **A.** Yes , with the exception of a summary.

1 **Summary:**

2 In view of all the violations and controversies that exist, Big Island would be better served with a regulated  
3 utility, operated and managed by a Public Service Commission certified company, Folsom Ridge has  
4 shown little respect for the authority of the Dept. of Natural Resources from the time of Folsom Ridge's  
5 arrival to Big Island in 1998. The developers should have known and done better. The concerned  
6 homeowners who have chosen to become complainants and intervenors have tried to compile  
7 documentation for the Commission to help them make a logical and just decision in this process. It must be  
8 considered by the commission that this documentation is only that which we, the intervenors, and  
9 complainants are aware. The developers as documented in this testimony have shown little respect for the  
10 State of Missouri and have given little priority to one of our most precious assets: clean, safe drinking  
11 water. I am not inferring in this testimony that the drinking water has ever been unsafe; only that Folsom  
12 Ridge has shown little regard for the potential health risks that are created when regulations and codes are  
13 not administered in a safe and reliable manner. The sewer and water systems need to be regulated . The 393  
14 Not for Profit Co. is not a satisfactory substitute for being a regulated system. Big Island has many property  
15 owners with commitments from Folsom Ridge dating back to the initial agreement between Folsom Ridge  
16 and the existing homeowners in January 1999. These homeowners who put their money into the escrow  
17 account for the purpose of construction of the systems were told only that they had the right to connect to  
18 the system at a time of their choosing without any payments until they connected to the system. At the time  
19 I connected to the sewer system in November 1999, there was no mention to me that I would be required to  
20 join any governing organization. I put my money into the Escrow account in good faith. A 393 requirement  
21 that I become a member of the 393 would be in conflict with my civil rights and previous agreement with  
22 Folsom Ridge. My original complaint to the PSC in case WA- 2006-0082 is very explicit about this conflict  
23 with the BIHOA. The 393 Not for Profit Co. would be no different as it requires membership by its  
24 statutes. The membership conflict is a major problem which certainly should be addressed before any  
25 consideration for the 393 company.