

SURREBUTTAL TESTIMONY
OF
Cathy J. Orlor
CASE NO.WC-2006-0082 & WO-2007-0277

INTRODUCTION

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is, Cathy J. Orlor. I reside at 3252 Big Island Drive, Roach, Missouri 65787.

PURPOSE SUMMARY

Q. WHAT IS THE PURPOSE OF THIS SURREBUTAL TESTIMONY?

A. To respond to the Rebuttal Testimony of Mr. Benjamin D. Pugh, for the purposes of clarification; and to substantiate with support documentation as CO Schedules, those statements provided in his Rebuttal Testimony, that have been disputed in incorrect statements by Mr. James A. Merciel, Jr., in his Surrebuttal Testimony.

Q. ON PAGE 3, LINES 3-16, OF MR. PUGH'S REBUTTAL TESTIMONY, MR. PUGH STATES THAT THERE ARE REGULATIONS OR REQUIREMENTS OF A TEN, (10), FOOT SEPARATION BETWEEN SERVICE LINES AND SERVICE SEWERS. IN MR. MERCIEL'S TESTIMONY, (PAGE 3, LINES 11-17), HE DISAGREES THAT THERE ARE "ANY SUCH REQUIREMENTS THAT APPLY IN THE BIG ISLAND AREA. "...AND TO MY KNOWLEDGE THERE ARE NO OTHER APPLICABLE REGULATIONS." AND, "...WHETHER OR NOT SUCH CRITERIA WOULD BE ENFORCEABLE FROM A REGULATORY VIEWPOINT." DO YOU BELIEVE MR. PUGH'S TESTIMONY IS CORRECT?

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1 A. Yes.

2 **Q. PLEASE EXPLAIN?**

3 A. Regulations and requirements do apply in the Big Island area, and from a regulatory viewpoint,
4 are enforceable by the Department of Natural Resources.

5 **Q. CAN YOU PROVIDE DOCUMENTATION TO SUPPORT YOUR ANSWER?**

6 A. Yes, I can.

7 **Q. WAS THERE A NOTICE OF VIOLATION, (NOV NUMBER 1315 JC),**
8 **ISSUED ON MAY 25, 1999, BY THE DNR, TO FOLSOM RIDGE, FOR**
9 **FAILURE TO CONSTRUCT WATER LINES AND SEWER LINES IN**
10 **ACCORDANCE WITH APPROVED PLANS?**

11 A. Yes.

12 **Q. DID THIS NOV INITIALLY ADDRESS THE FACT THAT WATER AND**
13 **WASTEWATER SERVICE LINES ON BIG ISLAND, WERE BEING PLACED**
14 **IN THE SAME TRENCH BY FOLSOM RIDGE, AND THAT A SEPARATION**
15 **OF WATER AND SEWER SERVICE LINES SHOULD MEET NATIONAL**
16 **PLUMBING CODE STANDARDS?**

17 A. Yes. (CO Schedule 1).

18 **Q. A DNR REPORT ON PLANS, SPECIFICATIONS AND AN ENGINEERING**
19 **REPORT FOR WATERLINE REPLACEMENT AND EXTENSION, DATED**

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OCTOBER 21, 2004, STATES THAT: "...AS EXISTING HOMES CONNECT TO THE PHASE I REPLACEMENT WATERLINE, IT IS ANTICIPATED THAT THE SERVICE LINES OF MANY HOMES WILL SHARE A COMMON 1-INCH PVC LINE UNDER THE ROADWAY. TECHNICALLY, THE 1-INCH WATERLINE IS A PART OF THE WATER DISTRIBUTION SYSTEM AND SUBJECT TO THE SEPARATION OF WATER AND SEWER LINE CONSTRUCTION POLICY." DOES THIS DNR REPORT UNDER REVIEW NUMBER 53303-04, ON AN ENGINEERING REPORT, PLANS AND SPECIFICATIONS FOR THE REPLACEMENT OF THE WATERLINE INSTALLED IN PHASE I, AGAIN SPECIFY A SEPARATION OF THE WATER AND SEWER SERVICE LINES BY FOLSOM RIDGE, AS A PART OF THE WATERLINE REPLACEMENT PROJECT, AS MANDATED BY DNR IN THE SETTLEMENT AGREEMENT?

A. Yes. (CO Schedule 2.)

Q. THEREFORE, IS MR. MERCIEL, INCORRECT IN HIS STATEMENT OF TESTIMONY, ON PAGE 3, LINES 11-17, THAT "...ANY SUCH REQUIREMENTS APPLY IN THE BIG ISLAND AREA." AND, "...THERE ARE NO OTHER APPLICAPABLE REGULATIONS." AND, "...WHETHER OR NOT SUCH CRITERIA WOULD BE ENFORCEABLE FROM A REGULATORY STANDPOINT?"

A. Yes, Mr. Merciel is incorrect. As per the attached CO Schedules 1 and 2, requirements and regulations do apply, that are indeed enforceable by DNR from a regulatory standpoint of both the

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1 Settlement Agreement for the waterline replacement, and the DNR NOV 1315 JC, wherein
2 Folsom Ridge was initially instructed by DNR, that the separation of the water and sewer service
3 lines should meet national plumbing codes.

4 Q. REFERENCING MR. PUGH'S REBUTTAL TESTIMONY, AND THE TEN
5 (10),

6 FOOT SEPARATION OF THE WATER AND SEWER SERVICE LINES, MR.
7 MERCIEL, ON PAGE 4, LINES 12-17, OF HIS SURREBUTTAL
8 TESTIMONY,

9 MR. MERCIEL STATES THAT SERVICE LINES CAN "...OPERATE
10 INDEPENDENTLY", AND "...CAN BE CONNECTED OR ABANDONED, AND
11 TURNED ON OR OFF, WITH NO DIRECT EFFECT ON THE OPERATION
12 OF

13 THE CENTRAL DISTRIBUTION SYSTEM AND OTHER CUSTOMERS."

14 HOWEVER, DOES THE POTENTIAL HEALTH RISK THAT IS CREATED
15 FROM

16 POSSIBLE CROSS CONTAMINATION WITH A LESS THAN 10 FOOT
17 MINIMUM

18 SEPARATION OF THE WATER AND SEWER SERVICE LINES, INDEED
19 HAVE A

20 DIRECT EFFECT ON THE OPERATION OF THE CENTRAL DISTRIBUTION
21 SYSTEM AND OTHER CUSTOMERS?

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1 A. Yes; and because individual shut off valves are not present at each residence connected to the
2 central distribution system, the potential health risk from possible cross contamination to other
3 customers connected to the central distribution system, becomes even greater.

4 Q. DID MR. MERCIEL MAKE RECOMMENDATIONS AND CONCLUSIONS TO
5 THE COMMISSION, (PAGES 5 AND 6), BASED ON HIS INCORRECT
6 STATEMENTS REGARDING THE ISSUE OF SERVICE LINES?

7 A. Yes.

8 Q. DID MR. MERCIEL RECOMMEND TO THE COMMISSION, NOT TO PLACE
9 ANY CONDITION, WITH RESPECT TO SERVICE LINE OR SEWER
10 SERVICE REPAIR OR REPLACEMENT, ON ITS APPROVAL OF THE
11 TRANSFER OF THE SUBJECT UTILITY ASSETS TO BIG ISLAND
12 WATER COMPANY AND BIG ISLAND SEWER COMPANY, ON PAGE 5,
13 LINES 6-9, OF HIS SURREBUTTAL TESTIMONY?

14 A. Yes.

15 Q. DO YOU AGREE WITH MR. MERCIEL'S RECOMMENDATION TO THE
16 COMMISSION?

17 A. No – I do not.

18 Q. PLEASE EXPLAIN?

19 A. Ms. Holstead, 393 Company President, submitted as evidence to the Commission at the Formal
20 Evidentiary Hearing, copies of the Bylaws of the Big Island Sewer Company and Bylaws of the

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1 Big Island Water Company. The bylaws of both utility companies list as exhibits, individuals who
2 have purchased a prepaid right to a future connection. "The Company shall reserve, and agrees
3 to reserve, capacity within the Sewer System and Water System to accommodate the reasonable
4 wastewater and water supply needs of each homeowner listed on Exhibit B." However, in an E-
5 mail sent to select Big Island Residents from Ms. Holstead, dated March 02, 2007, Ms. Holstead
6 addresses service lines, and now states: "The 393 Board of Directors for the 393 Companies
7 have decided to edit the 393 bylaws to reserve the right to REFUSE new service to any home
8 where the water and sewer service lines are not appropriately separated. This would probably
9 mean a separation of at least 10 feet." (CO Schedule 3).

10 Therefore, conditions already exist, regarding the water and sewer service lines on Big Island,
11 and individuals' right to receive future service where the 393 Companies are concerned. As a
12 result, the correct repair or replacement of the service line or sewer service, must be resolved by
13 Folsom Ridge, who is the responsible party. I am an individual who has paid for the future right to
14 connect to both the water and sewer system, as confirmed in the bylaws of the 393 Companies in
15 Exhibit B. Now however, Ms. Holstead has stated under signature, that the 393 Companies
16 reserve the right to REFUSE new service to any home where the water and sewer lines are not
17 appropriately separated. This would probably mean a separation of 10 feet. My water and sewer
18 service lines installed by Folsom Ridge, (as per my Rebuttal Testimony), are NOT separated by 10
19 feet, and now, Ms. Holstead has stated that service will be refused to me, because the installation
20 of those lines by Folsom Ridge, was not separated by 10 feet. Therefore, the situation that exists
21 on Big Island regarding water and sewer service lines, must be addressed and resolved.

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1 **Q. BASED ON HIS PREVIOUS, INCORRECT STATEMENTS REGARDING WATER**
2 **AND SEWER SERVICE LINES, DID MR. MERCIEL ALSO INCORRECTLY STATE**
3 **ON PAGE 5, LINES 19-20, THAT: "...IT IS NOT CLEAR AS TO WHO IS**
4 **ULTIMATELY RESPONSIBLE FOR THE INSTALLATIONS?"**

5 A. Yes. However, on page 2, lines 3-8, Mr. Crowder in his Direct Testimony, accepts responsibility
6 as
7 construction manager for Folsom Ridge, for the installation of new water system service lines for
8 each residence along the course of the replacement line pursuant to the Settlement Agreement
9 with
10 DNR.

11 **Q. ON PAGE 6, LINES 1-2, OF HIS SURREBUTTAL TESTIMONY, MR. MERCIEL**
12 **STATES**
13 **TO THE COMMISSION, THAT: "...I DON'T BELIEVE THAT A CONDITION**
14 **PLACED**
15 **BY THE COMMISSION WILL ULTIMATELY GUARENTEE THAT FOLSOM**
16 **RIDGE**
17 **LLC WILL PAY FOR RELOCATIONS." IF THE CORRECT INSTALLATION OF**
18 **THE**

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1 **WATER AND SEWER SERVICE LINES BY FOLSOM RIDGE, WAS A PART OF**
2 **THE**
3 **WATERLINE REPLACEMENT AS PER THE SETTELEMENT AGREEMENT**
4 **BETWEEN**
5 **DNR AND THE ATTORNEY GENERAL'S OFFICE, IS IT NOT THE ATTORNEY**
6 **GENERAL'S OFFICE WHO SHOULD BE ENFORCING THE CORRECT**
7 **INSTALLATION OF THE WATER AND SEWER SERVICE LINES BY FOLSOM**
8 **RIDGE?**

9 A. I would believe so. I am not an attorney, and therefore, am not rendering a legal conclusion.

10 However, this appears to be common sense to me.

11 **Q. DO YOU DISAGREE WITH MR. MERCIEL, THAT THE LIABILITY ISSUE(S)**
12 **ASSOCIATED WITH THE WATER AND SEWER SERVICE LINES, SHOULD BE**
13 **TRANSFERRED TO THE 393 COMPANIES - BIG ISLAND WATER COMPANY**
14 **AND THE BIG ISLAND SEWER COMPANY?**

15 A. Yes, I disagree with Mr. Merciel, that the liabilities associated with water and sewer service lines,
16 should be transferred to the homeowners of Big Island. The issues associated with the water and
17 sewer service lines, are very clearly the responsibility of Folsom Ridge, and should not be
18 transferred to the homeowners as liabilities.

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1 **Q. DO YOU AGREE WITH MR. MERCIEL'S RECOMMENDATION TO THE**
2 **COMMISSION, "NOT TO ADDRESS THESE MATTERS?"**

3 A. No – most definitely, I do not. "These matters," are the very issues of the nine, (9), Formal
4 Complaints that were filed with the MPSC. Folsom Ridge, LLC., has been owning and controlling
5 the Big Island Homeowners' Water and Sewer Association, (f.k.a. – BIHOA).

6 **Q. DOES MR. MERCIEL STATE THAT THERE ARE NO "SUBDIVISION**
7 **RESTRICTIONS APPLICABLE TO THESE INSTALLATIONS?"**

8 A. Yes.

9 **Q. DO YOU AGREE WITH MR. MERCIEL'S STATEMENT?**

10 A. No, I do not.

11 **Q. PLEASE EXPLAIN?**

12 A. As per the "Amended and Restated Covenants and Conditions" of the BIHOA, Article IV –
13 Conveyance for Maintenance Assessments; Section 4, B: "For a period of five, (5), years, from
14 September 01, 2000, with regard to the water system and sewer system presently in existence and
15 installed by Folsom, and such additional systems or additions thereto, (expansion) that may be
16 installed in the future by Folsom, Folsom warrants the Water System and the Sewer System were
17 installed in accordance with customary installation procedures and to the best of Folsom's
18 knowledge were installed in accordance with applicable laws and regulations. In the event a
19 defect is discovered within the warranty period, for (a) the water and sewer lines installed by

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1 Folsom and/or (b) the sand beds installed by Folsom serving the sewer system, Folsom commits to
2 repair defects at its sole cost.”

3 **Q. WAS YOUR FORMAL COMPLAINT FILED WITH THE MPSC, MADE PRIOR TO**
4 **SEPTEMBER 01, 2005, TO PREVENT THE TRANSFER OF LIABILITY**
5 **ASSOCIATED WITH THE WATER AND SEWER SYSTEM TO THE RESIDENTS OF**
6 **BIG ISLAND?**

7 A. Yes. As a matter of fact, the requested relief from the MPSC, was for a temporary injunction to
8 halt the transfer of liabilities. (I was unaware that this power did not exist within the jurisdiction
9 of the MPSC).

10 **Q. DOES MR. MERCIEL STATE ON PAGE 6, LINES 11-12, “...THE ENTIRE SCOPE**
11 **OF THIS CASE GOES FAR BEYOND THE SERVICE LINES...?”**

12 A. Yes.

13 **Q. DO YOU AGREE WITH THIS STATEMENT MADE BY MR. MERCIEL, EVEN**
14 **THOUGH YOU HAVE PROVIDED CLARIFICATION TO DISPUTE MANY OF MR.**
15 **MERCIEL’S OTHER STATEMENTS PROVIDED IN HIS TESTIMONY?**

16 A. Ironically, yes I do.

17 **Q. PLEASE EXPLAIN?**

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1 A. Yes, the “entire scope of this case goes far beyond the service lines,” which is why nine, (9),
2 Formal Complaints were filed with the MPSC against Folsom Ridge, LLC., Owning and
3 Controlling the BIHOA. This utility needs to be regulated. The approval by the Commission, to
4 transfer the utility assets to the 393 Companies, which are still, other unregulated entities, does
5 NOT resolve the utility issues on Big Island.

6 **Q. DO YOU ALSO AGREE WITH THE FINAL STATEMENT MADE BY MR.**
7 **MERCIEL IN HIS SURREBUTTAL TESTIMONY ON PAGE 6, LINES 16-18, THAT:**
8 **“THE SERVICE LINE ISSUE IS ONE OF MANY THAT ANY UTILITY WOULD**
9 **NEED TO ADDRESS IN ORDER TO PROVIDE SERVICE INTO THE FUTURE?”**

10 A. Yes, I do.

11 **Q. HAS MR. MERCIEL PROVIDED ANY TESTIMONY TO THE COMMISSION,**
12 **REGARDING THE EXISTENCE AND SUCCESSFUL IMPLEMENTATION OF 393**
13 **COMPANIES IN AN ESTABLISHED COMMUNITY OF PREEXISTING**
14 **HOMEOWNERS WITH PRIVATE WELLS AND SEPTIC SYSTEMS, GOVERNED BY**
15 **OTHER RESTRICTIVE COVENANTS ALREADY IN PLACE, AND NEW**
16 **DEVELOPMENT WITH MANY UTILITY ISSUES ASSOCIATED WITH ITS**
17 **PRESENT UTILITY; TO SUPPORT HIS RECOMMENDATION TO THE**
18 **COMMISSION, TO APPROVE THE TRANSFER OF ASSETS TO THE 393**
19 **COMPANIES?**

20 A. No, he has not.

1 **Q. DOES MR. MERCIEL’S OBJECTIVE OF A “LEGITIMATELY CREATED UTILITY**
2 **FOR THE PURPOSE OF OWNING AND OPERATING THESE UTILITY SYSTEMS,”**
3 **ADDRESS AND/OR RESOLVE THE UTILITY ISSUES OF BIG ISLAND, AND/OR**
4 **JUSTIFY HIS RECOMMENDATION TO THE COMMISSION TO TRANSFER THE**
5 **UTILITY ASSETS TO THE “LEGITIMATELY CREATED” 393 COMPANIES?**

6 A. No, it does not. Folsom Ridge, LLC, and the BIHOA, are also, both “legitimately created” legal
7 entities.

8 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

9 A. Yes.

