

Exhibit No.: _____

Issues: Reasonableness of
Transfer of Assets
Technical Issues

Witness Name: James A. Merciel, Jr.

Type of Exhibit: Surrebuttal Testimony

Sponsoring Party: MO PSC Staff

Case No.: WC-2006-0082

WO-2007-0277

Date Testimony Prepared: March 23, 2007

Missouri Public Service Commission

Utility Operations Division

Surrebuttal Testimony

of

James A. Merciel, Jr.

Folsom Ridge, LLC

**Big Island Homeowners Water and Sewer Association, Inc.
Big Island Water Company and Big Island Sewer Company**

Case Nos. WC-2006-0082

and

WO-2007-0277

Jefferson City, Missouri

March 23, 2007

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

In the Matter of Cathy J. Orler, Complainant,)
vs.)
Folsom Ridge, LLC (Owning and Controlling)
the BIHOA), Respondent.)

Case No. WC-2006-0082

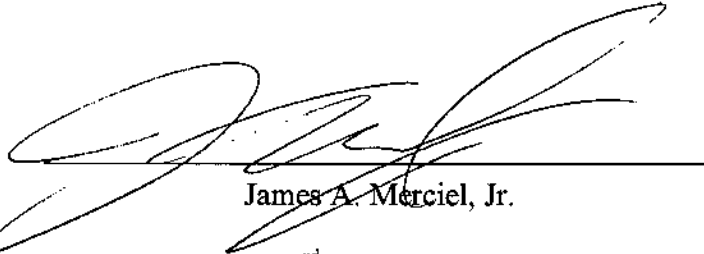
In the matter of the Application of Folsom)
Ridge LLC and Big Island Homeowners Water)
and Sewer Association, Inc. for an order)
authorizing the transfer and Assignment of)
Certain Water and Sewer Assets to Big Island)
Water Company and Big Island Sewer)
Company, and in connection there with certain)
other related transactions.)

Case No. WO-2007-0277

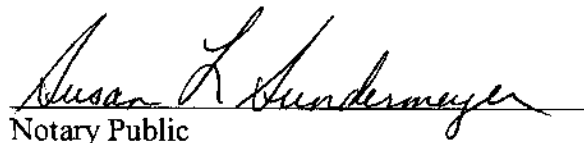
AFFIDAVIT OF JAMES A. MERCIEL, JR.

STATE OF MISSOURI)
) SS
COUNTY OF COLE)

COMES NOW James A. Merciel, Jr., being of lawful age, and on his oath states the following: (1) that he has participated in the preparation of the following Surrebuttal Testimony, presented in question and answer form, consisting of 6 pages; (2) that the answers in the subject testimony were given by him; (3) that he has knowledge of the matters set forth in such answers; and (4) that such matters are true and correct to the best of his knowledge, information and belief.


James A. Merciel, Jr.

Subscribed and sworn to before me this 23rd day of March, 2007.


Notary Public

My Commission Expires: 9-21-10



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086

1
2
3
4
5
6
7
8
9
10
11
12

<u>TABLE OF CONTENTS</u>	
SURREBUTTAL TESTIMONY	
OF	
JAMES A. MERCIEL, JR.	
FOLSOM RIDGE, LLC	
BIG ISLAND HOMEOWNERS WATER AND SEWER ASSOCIATION, INC.	
BIG ISLAND WATER COMPANY AND BIG ISLAND SEWER COMPANY	
CASE NOS. WC-2006-0082 and WO-2007-0277	
INTRODUCTION	1
WATER SERVICE LINE AND SERVICE SEWER PIPELINE INSTALLATIONS	2
SERVICE LINE AND SERVICE SEWER OWNERSHIP/MAINTENANCE	4
RECOMMENDATIONS AND CONCLUSIONS	5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

SURREBUTTAL TESTIMONY

OF

JAMES A. MERCIEL, JR.

FOLSOM RIDGE, LLC

BIG ISLAND HOMEOWNERS WATER AND SEWER ASSOCIATION, INC.

BIG ISLAND WATER COMPANY AND BIG ISLAND SEWER COMPANY

CASE NOS. WC-2006-0082 and WO-2007-0277

INTRODUCTION

Q. Please state your name and business mailing address.

A. James A. Merciel, Jr., P. O. Box 360, Jefferson City, Missouri, 65102.

Q. Are you the same James A. Merciel, Jr. who filed Rebuttal Testimony in these cases on February 16, 2007?

A. Yes.

EXECUTIVE SUMMARY

Q. What is the purpose of this Surrebuttal testimony?

A. The purpose of this Surrebuttal Testimony is to respond to the Rebuttal Testimony filed by Benjamin D. Pugh (Mr. Pugh) and Cathy Orler (Ms. Orler) on March 19, 2007.

Q. Please summarize the Surrebuttal Testimony you are presenting?

A. My Surrebuttal Testimony, in response to the above referenced testimony, will discuss some points pertaining to the installation criteria for water service lines (“service lines”) and for service sewer pipelines (“service sewers”) and the ownership

1 and maintenance responsibilities of these particular facilities. I will also offer a
2 recommendation to the Commission with regard to the treatment of these issues
3 pertaining to the resolution of the subject cases.

4 **WATER SERVICE LINE AND SERVICE SEWER PIPELINE INSTALLATIONS**

5 **Q. Would you first please briefly describe what “service lines” and**
6 **“service sewers” are?**

7 A. Yes. “Service lines” are pipelines that are used to conduct potable water
8 to the customers’ premises from either the utility-owned water main, or from a point at or
9 near the street curb which could be a water meter installation or a valve. “Service
10 sewers” are pipelines that are used to conduct sewage from the customers’ premises to
11 the utility-owned collecting sewer. This type of wording is included in the definitions of
12 the tariffs of many regulated water utilities and sewer utilities, although specific company
13 definitions most often also either include or exclude certain connection fittings, and may
14 include provisions with regard to ownership and maintenance responsibility. Water
15 service lines, most often but not always, are owned by the customers and are connected to
16 a pipeline typically called a “service connection” at or near the property line. The service
17 connection is a pipeline that, again most often but not always, is owned by the utility, is
18 connected to the main and extends to the property line or perhaps a meter setting near the
19 property line, to which the service line is connected. Even though the service lines and
20 service sewers may well be owned by the customers, utilities typically have control over
21 their locations either by ownership of the connection to the main or collecting sewer, or
22 through inspection and approval of the installations.

1 **Q. Do you agree with Mr. Pugh's and Ms. Orlor's statements in their**
2 **testimonies with regard to a need for quality installation, and possible health risks,**
3 **associated with service lines and service sewers in proximity to each other?**

4 A. Yes, I generally agree with their statements and concerns with regard to
5 possible contamination risks. This is especially true in situations where the service
6 sewers are operating under pressure, similar to the water service lines, as they do in the
7 Big Island system.

8 **Q. Do you agree with Mr. Pugh's inference on page 3 lines 13-16 in his**
9 **testimony that there are regulations or requirements of a ten (10) foot separation**
10 **between service lines and service sewers?**

11 A. No, I do not agree that there are any such requirements that apply in the
12 Big Island area. Camden County has no plumbing codes or building codes that address
13 this issue, and to my knowledge there are no other applicable regulations. This is not to
14 say that such a separation, some other separation distance, or alternative precautions to
15 reduce contamination risks when close proximity cannot be avoided, would not be good
16 practice for these installations, whether or not such criteria would be enforceable from a
17 regulatory viewpoint.

18 **Q. Do you agree with Mr. Pugh's and Ms. Orlor's statements in their**
19 **testimonies with regard to a need for quality pipeline installation?**

20 A. Yes, I generally agree with their statements with regard to the need for
21 good installations, including pipeline bedding and backfill. However, similar to the
22 apparent lack of enforceable requirements related to the separation of service lines and

1 service sewers, there is also an apparent lack of installation requirements that could be
2 enforced. In addition, unfortunately, neither I nor anyone else from the PSC Staff has
3 first-hand knowledge of what is actually installed in the Big Island system, beyond the
4 pictures and testimony that have been presented in this case. As a result of this, the
5 extent of this issue is really not clear.

6 **SERVICE LINE AND SERVICE SEWER OWNERSHIP/MAINTENANCE**

7 **Q. Do you agree with Ms. Orler's testimony beginning on page 2 line 14**
8 **through page 3 line 15, with regard to water mains and service lines operating as a**
9 **single system?**

10 A. Not completely. My disagreement is in her answer to a question on page 3
11 lines 8 through 10, with the answer on line 11, pertaining to whether or not water mains
12 are capable of operating independently of service lines. Her answer is that they cannot
13 operate independently, but I believe that they most certainly can be operated
14 independently. Unlike the central water distribution system, the operation of which
15 affects many or perhaps all customers, service lines are associated with individual
16 customers. They can be connected or abandoned, and turned on or off, with no direct
17 effect on the operation of the central distribution system and other customers. This
18 fundamental independence of service lines permits installation, ownership and
19 maintenance responsibilities to be placed upon each customer rather than upon the utility,
20 and in fact service lines are considered to be a part of the house plumbing in some local
21 codes and even in the U.S. Internal Revenue Service tax codes. The point of this is that

1 service lines, and similarly service sewers, can be and indeed are treated substantially
2 different than utility owned water distribution mains and collecting sewers.

3 **RECOMMENDATIONS AND CONCLUSIONS**

4 **Q. Do you have a recommendation for the Commission on the issue of**
5 **service lines?**

6 A. Yes, I do. I recommend that the Commission not place any condition,
7 with respect to service line or service sewer repair or replacement, on its approval of the
8 transfer of the subject utility assets to Big Island Water Company and Big Island Sewer
9 Company.

10 **Q. Considering the possible health risks and stated concerns of about the**
11 **service line installations and their proximity to the service sewers, why do you**
12 **recommend that the Commission not address these matters?**

13 A. Because, first, in my opinion there are no Commission rules, Missouri
14 Department of Natural Resources regulations, local regulations, or subdivision
15 restrictions applicable to these installations, and no contract provisions or standards
16 except those that may exist as recommendations to be adopted by local codes, upon
17 which to base a good condition of approval or to determine adequacy of “safe and
18 adequate service” with respect to the service line issue.

19 Second, it is not clear as to who is ultimately responsible for the installations,
20 since there are no ownership rules. This means that homeowners could be responsible for
21 installations if they allowed someone, maybe Folsom Ridge LLC, to install what could be
22 their individual service lines and service sewers. However, even if individual customers

1 are not directly liable for the installations, I don't believe that a condition placed by the
2 Commission will ultimately guarantee that Folsom Ridge LLC will pay for relocations
3 and repairs, and thus the customers may end up paying for relocations through rates of
4 whatever utility ends up spending money on this issue.

5 Third, the extent or severity of the problem has not been established, nor is it clear
6 what it would take to fix the problem to everyone's reasonable satisfaction. The possible
7 resolutions are extremely broad, ranging from doing nothing to replacing and relocating
8 all the service lines or service sewers.

9 And, fourth, this controversy is such that a condition regarding replacement of
10 service lines and/or service sewers ordered by the Commission could stop this transfer
11 from taking place. Although that is what some parties would like to happen, the entire
12 scope of this case goes far beyond the service lines; it addresses what entity might
13 become a legitimate utility providing service in the Big Island area. There is no utility
14 legitimately providing service now, in the Staff's opinion. The request in this case is for
15 approval to transfer assets to a utility that, in the Staff's opinion, is legitimately created
16 for the purpose of owning and operating these utility systems. The service line issue is
17 one of many that any utility would need to address in order to provide service into the
18 future.

19 **Q. Does this conclude your Surrebuttal Testimony?**

20 **A.** Yes, it does.