

Exhibit No.:	_____
Issue:	Overview of Asset Transfer Agreement and Public Interest
Witness:	Rick Rusaw
Sponsoring Party:	Big Island Water & Sewer Company, Inc.
Case No.:	Case No. WO-2007-0277 Joined for hearing with Case No. WC-2006-0082

BIG ISLAND WATER & SEWER COMPANY, INC.

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REBUTTAL TESTIMONY

OF

RICK RUSAW

Longmont, Colorado
February, 2007

1 REBUTTAL TESTIMONY OF RICK RUSAW

2 Q. **What is your name and your business address?**

3 A. My name is Rick Rusaw. The address I consider my business address is the address of
4 the church where I am senior pastor. That address is Lifebridge Christian Church, 10345
5 Ute Highway, Longmont, Colorado 80504
6

7 Q. **Are you the same Rick Rusaw who filed direct testimony in this matter?**

8 A. Yes, I am.
9

10 Q. **What is the purpose of your rebuttal testimony?**

11 A. I will be responding to portions of the direct testimony filed by Cathy Orlor, Ben Pugh
12 and Cindy Fortney. Other witnesses will be responding to their testimony as well.
13

14 **Ms. Orlor's Direct Testimony**

15 Q. **On page 1 and 3 of her direct, (there is no page 2) Mr. Orlor offers several reasons**
16 **why she provides testimony. What is your response?**

17 A. Instead of going line by line of her testimony, I will say that Mr. Golden and I, and our
18 company, Folsom Ridge LLC, have complied with each and every regulatory agency
19 governing the construction and operation of the water and sewer systems on Big Island.
20 The Missouri Department of Natural Resources issued notices of violation during the
21 construction of the systems and for every one, Folsom Ridge responded appropriately and
22 reasonably. It paid DNR's requested penalties and rectified situations DNR deemed
23 unsatisfactory. The systems are operating successfully, are managed successfully and in

1 compliance with applicable environmental regulations. Mr. McDuffey and Mr. Krehbiel
2 will also testify about this.

3
4 The existence of a centralized sewer system and community water distribution system has
5 created value in the property on Big Island and when the objections raised by the
6 interveners in this case are finally overruled, the value of property on the Island will
7 again see an increase. Property values on the Island continue to appreciate because of the
8 facilities Folsom Ridge has installed for wastewater management and water distribution.
9 In addition, we have paved the road and provided a boat ramp and numerous other
10 features and amenities on Big Island. I would say that Ms. Orler's testimony has more
11 negatively affected those values, not what Folsom Ridge has done or is doing to provide
12 water and sewer service on the Island.

13
14 Individuals who have paid the required connection fees to or for the benefit of Folsom
15 Ridge will have the right to connect to the systems but they have not acquired any
16 financial interest or investment in the utility. Ms. Orler has no financial interest in
17 Folsom Ridge, or its property, to protect. Neither does she have a financial interest in the
18 Association, or its property, to protect. It was Ms. Orler's predecessor in title who paid
19 the tap fees required to have the right to connect.

20
21 Regarding her statement that the 393 Companies will impose membership, that is a
22 matter of state law. Membership in a 393 Company is required by statute for persons
23 accepting services from such an entity. Membership is not unlike being a customer of a

1 regulated company. Customers must agree to abide by the rules of the serving utility just
2 as members agree to do with 393 Companies. Regarding liabilities, the Commission
3 should note that the 393 Companies' bylaws provide that members are insulated from
4 liability for the debts of each company.

5
6 Regarding her request that there be a regulated company created to provide water and
7 sewer service, an affiliated company of Folsom Ridge filed an application for
8 certification before this Commission but Ms. Orlor and other interveners in this case
9 objected to approval of that certificate.

10
11 **Q. On page 4, and again on pages 8 through 9, Ms. Orlor appears to claim that she or**
12 **others requested certain documents in this matter. Have all data requests been**
13 **complied with in the cases joined for hearing?**

14 **A.** Yes, all data requests submitted to the company have been answered. In Case No. WO-
15 2007-0227, the applicants have not received any requests for the documentation Ms.
16 Orlor lists on page 8 and the top of page 9.

17
18
19 **Q. On pages 4 - 5 of her direct Ms. Orlor refers to the number of Big Island residents**
20 **who have not ratified the covenants and restrictions enforced by the Association.**
21 **Are these residents opposed to the services that would be supplied by the 393**
22 **Companies?**

1 A. Based upon the results of the voting during the Big Island Homeowners Water and Sewer
2 Association (the “Association”) meeting of January 29, 2007, it appears that the greater
3 majority of landowners on the Island, whether they have ratified or not, are in favor of the
4 393 Companies accepting the service responsibility. The results of that vote are in my
5 direct testimony filed on February 13.

6
7 Q. **Also on page 5 refers to an Escrow Agreement and lists a series of opinions she**
8 **claims were rendered by attorneys about service provided at Big Island. Has the**
9 **escrow arrangement been an effective tool in the collection of connection fees and**
10 **the extension of facilities to residents?**

11 A. Yes, it has. Although Central Bank never executed an escrow agreement for these
12 purposes, it did establish a bank account and restricted disbursement of funds from that
13 account until such time as the system met the requirements listed on the escrow
14 agreement draft. This arrangement with Central Bank worked very well overall for the
15 bulk of the residents on the Island, Ms. Orler’s objections notwithstanding. Regarding the
16 opinions she lists, counsel will object to their reference. Even so, the Commission should
17 realize that there have been no proceedings in a court of law which have questioned the
18 way in which service to customers on Big Island is being provided by the Association.
19 Our position in this Commission is that the provision of service there is in compliance
20 with all laws including the Public Service Commission law. I suspect the Commission
21 has received many conflicting opinions of counsel over the years.

1 Q. **On page 7, Ms. Orlor claims she knows why a public utility was not sought initially.**
2 **Is she authorized to speak on your behalf?**

3 A. No, she is not. She would have no idea of the reasons for our decisions.
4

5 Q. **On pages 7 and 8, Ms. Orlor claims that she was “intimidated” and “threatened” by**
6 **you and Mr. Golden. Did you ever threaten or intimidate Ms. Orlor?**

7 A. No. Ms. Orlor was asked to enter agreements which every other person connected to the
8 system has agreed to for proper billing, collection, operation and maintenance of the
9 systems. The same was expected of Ms. Fortney. Ms. Orlor and Ms. Fortney may feel
10 as if they were singled out, but that was because out of all the customers at the May 2005
11 meeting, they were the only ones refusing to pay. Neither denied this at the meeting Ms.
12 Orlor refers to in her testimony. It was difficult to discuss the situation with either. Both
13 were rude to the members at the meeting and the people leading the meeting.
14

15 Q. **On page 8, Ms. Orlor also discusses the reinstallation of her water line. Did Folsom**
16 **Ridge have an obligation to reinstall Ms. Orlor’s water line?**

17 A. Absolutely not. It did not have an obligation to reinstall Ms. Fortney’s line either.
18 However, both Folsom Ridge and the Association agreed to install a connection point in
19 front of her residence if she agreed to start paying the required fees. She agreed, the
20 connection point was installed but Ms. Orlor has refused to comply with her part of the
21 bargain.
22

1 Q. **On page 9, Ms. Orlor refers to negotiations before she and others filed complaints in**
2 **another case. Were negotiations in good faith?**

3 A. No, Ms. Orlor has not been reasonable in her negotiations with Folsom Ridge or the
4 Association. She has not honored agreements she entered with the companies.

5
6 Q. **She also states again on page 10 that she was threatened and intimidated. Have you**
7 **or Folsom Ridge ever threatened or intimidated Ms. Orlor.**

8 A. No. Demanding payment of fees due, particularly fees that were part of an agreement she
9 said she would honor, cannot be considered threatening or intimidating. She is correct
10 that the Association is continuing to bill her for past fees. As part of the agreement we
11 reached, an agreement Folsom Ridge complied with fully, we would waive those fees if
12 she started paying regularly but she has not honored her part of the agreement.

13
14
15 Q. **On page 11 of her direct testimony, she claims that billing for services rendered to**
16 **“nonmembers” is a violation of laws applicable to the Commission and rules and**
17 **regulations of the Missouri Department of Natural Resources (DNR)? What is the**
18 **applicants’ position?**

19
20 A. I think I have mentioned this before. The position of Folsom Ridge and the Association
21 is that the operations of the water and sewer systems and billing for service provided by
22 each complies with the Public Service Commission Law and all applicable rules and

1 regulations of DNR. This is borne out in the direct testimony the applicants filed on
2 February 13.

3
4 **Q. On pages 11-12 of her direct, Ms. Orlor claims that you or Mr. Golden were**
5 **responsible for contacting property owners about the opportunity for better sewer**
6 **and water services. She also states that you and Mr. Golden were active in the**
7 **installation of the facilities. Were these the roles you and Mr. Golden were assigned**
8 **for this development?**

9 **A.** Ms. Orlor is confusing Mr. Golden and me with David Lees, a former member of the
10 LLC whose interest in the LLC was terminated in April of 2001. Mr. Lees was the point
11 person for this development. Mr. Lees was the only member of the company that was
12 paid for his services. He was paid from April 1998 through April 2001. Mr. Golden and
13 I were simply investment partners. Mr. Lees was responsible for canvassing existing
14 residents, acquiring the connection fees for the facilities and then supervising the
15 installation of those facilities in connection with engineering professionals. As Ms.
16 Brunk has explained in her testimony, our position is that Mr. Lees oversaw the
17 construction company on site to install the water and sewer lines in a manner violating
18 applicable regulations of DNR. After his termination, Mr. Golden's and my participation
19 in this project changed.

20
21 **Q. Continuing on page 12, Ms. Orlor claims that an excess Contribution in Aid of**
22 **Construction amount was collected and the excess is to be refunded to the residents.**
23 **She also claims that the agreement for connection was that there would be no**

1 **additional charges until connection and no membership in any organization. Is she**
2 **correct?**

3 A. Tap fees paid by residents were in exchange for the right to connect to the systems. They
4 were not refundable, in whole or in part, under the terms of the escrow arrangement used
5 to collect and distribute them. Regarding the organization which would own and
6 maintain the systems and the relationship each resident would have to that organization,
7 there was no term in the agreement with residents which excluded the idea of a
8 homeowners association, or other entity, and membership in that organization for
9 purposes of obtaining service.

10
11 Q. **On pages 12-13, Ms. Orlor sets out more issues she claims are involved in this case.**
12 **Do you have a response?**

13 A. Generally, these are arguments she has raised without a basis in fact, or arguments that
14 have no bearing on the application in this case, that she has raised for many years. I will
15 note that any facilities installed incorrectly have been rectified, that all notices of
16 violation by DNR have been resolved, and the person in our company responsible for
17 many of those problems has been removed; that the system is sized for present customers
18 and will be expanded to account for growth, all in compliance with applicable state
19 regulation; that by law, as an owner of lots within the affected area, Folsom Ridge is
20 entitled to vote as a member of the Association and the Association has welcomed
21 participation by all residents on the Island whether they consider themselves members or
22 not; that operations of the water and sewer systems have not been subsidized by Folsom
23 Ridge except at a time early in their operation; persons who use the water and sewer

1 system are expected to pay for what they use along with everyone else who is connected
2 to the system, and membership in the Association is expected as part of that process;
3 closings on the sale of property on Big Island are affected by the terms and conditions of
4 restrictions of record, and title companies expect the Association and its attorneys to be
5 involved in closings; commitments made by Folsom Ridge have been kept and finally, as
6 if this has not been stated enough before, no individual has been threatened, coerced or
7 intimidated into joining the Association. As I mentioned above, we have encouraged
8 wide participation by residents whether they consider themselves members or not and
9 that is not a violation of the Association's bylaws.

10
11 **Q. On page 14-15 of her direct, Ms. Orlor discusses appointment of a receiver for the**
12 **water and sewer system on Big Island. What is your response to this?**

13 **A.** As my direct testimony shows, and the direct testimony of Ms. Brunk, Mr. Krehbiel and
14 Mr. McDuffey shows, the water and sewer systems on Big Island have been operated and
15 maintained at the highest standards and the construction of the systems is in compliance
16 with all of DNR's requirements and engineering requirements. The condition of the
17 systems at this time is excellent. Ms. Orlor is not connected to the systems and has no
18 basis to claim that service is anything but safe and adequate. Mr. McDuffey has already
19 testified that those connected to the system have had no complaints about service.
20 Folsom Ridge has rectified each and every DNR notice of violation and report of
21 unsatisfactory condition.

1 **Q. On pages 16 - 17, Ms. Orler objects to the transfer of the assets to the 393**
2 **Companies. What is your response?**

3 A. The systems are in superlative condition and the operator of the system exceeds the
4 applicable standard in maintaining and administering the systems. The residents of Big
5 Island must have services from a lawful provider. Folsom Ridge and the Association
6 provide lawful service but to put an end to disputes about this, both are prepared to hand
7 over the systems to the 393 Companies. The customers of the systems have been
8 completely satisfied with the services received. Those services are safe and adequate.
9 What I have said here is also a response to Ms. Orler's similar remarks on page 20 of her
10 direct.

11
12 **Q. On page 18, Ms. Orler claims that by accepting the systems "as is" the 393**
13 **Companies are incapable of managing them. Explain to the Commission the**
14 **significance of this term of the asset purchase agreement.**

15 A. The systems have been in the ground for over seven years. The warranties supplied by
16 the contractors involved have all lapsed. However, as witnesses in this case have
17 testified, the systems are in compliance with DNR regulations and are operational. Their
18 condition is acceptable to not only the 393 Companies after inspection, they are
19 acceptable to DNR. Furthermore, new construction and extensions of the systems are
20 underway. Any warranties associated with those improvements will be transferred by the
21 Sellers to the 393 Companies. Also, any extensions to the systems in the future
22 constructed under the Extension Agreement appended to the Purchase Agreement will be

1 warranted. Finally, the reserve account which has been kept by the Association will be
2 transferred to the 393 Companies.

3
4
5 **Q. At the bottom of page 20 and over to page 21 Ms. Orler refers to the platting of the**
6 **center of Big Island. Were protection of your property rights involved in the**
7 **platting of that area?**

8 A. Yes, they were, undoubtedly, but at the same time, and quite beneficially, the platting of
9 that area provides us with a baseline for future development.

10
11
12 **Q. On page 21 of her direct, Ms. Orler comments on the plans for extending the**
13 **systems. What is your response to her questions and answers on page 21?**

14 A. Very simply, the water and sewer facilities have **always** been designed for expansion.
15 The original systems were designed to offer the services to more than just the residents
16 currently there. I do not know how Ms. Orler can state otherwise.

17
18 **Q. On page 22 of her direct, Ms. Orler refers to the PUD for the Island and the**
19 **Amended Covenants and Restrictions of record. What is your response?**

20 A. No violations of the restrictions are being committed except those committed by Ms.
21 Orler and others who have refused to comply with them. The original Association
22 Covenants and Restrictions included all of the real property that Folsom Ridge owned or
23 owns. The Restrictions contain a comprehensive legal description of the land affected

1 and do not refer to new subdivisions by name. This is because the covenants were of
2 record before the new subdivisions were created. Regarding the question and answer
3 starting at line 13 of that page, neither system is over capacity and neither has ever been
4 over capacity. The connections allowed by Folsom Ridge or the Association are within
5 the capacity and the capacity additions approved by DNR.

6
7 **Q. On page 23 of her direct, Ms. Orlor again suggests that you and Mr. Golden**
8 **approached local residents about sewer and water tap fees. She also claims that she**
9 **was intimidated and coerced again. What is your response to page 23 of her**
10 **testimony?**

11 **A.** I will repeat that David Lees as Folsom Ridge local manager contacted property owners
12 about the opportunity to connect to the water and sewer systems. I will again state that
13 no degree of coercion, intimidation or threatening was involved in this public service.
14 Each resident was given the opportunity to join. At every step, Folsom Ridge cooperated
15 with the residents even to the point of amending the covenants and restrictions pursuant
16 to resident request. Even Ms. Orlor's predecessor in title agreed to pay the tap fees and
17 her right to connect was transferred to her with her home. We did not expect cooperation
18 from Ms. Orlor, however.

19
20 Because there were properties that would benefit from the systems, which properties
21 were not in the original covenants and restrictions, those property owners were asked to
22 **ratify** or agree to the covenants with respect to their property. This was entirely
23 consistent with the agreements and representations made from the beginning.

1

2 **Q. On page 23 Ms. Orler discusses the sales potential of platted lots on the Island and**
3 **claims that information about sales history has not been provided to her. Will**
4 **Folsom Ridge's property sales affect the finances of the 393 Companies?**

5 A. No, the 393 Companies are stand alone companies and are not affiliated with Folsom
6 Ridge. I will also add that Ms. Orler has never asked for information about Folsom
7 Ridge's sales history.

8

9 **Q. On page 24, Ms. Orler claims that you and Mr. Golden have purchased more**
10 **properties on the Island not in the name of Folsom Ridge. Is that correct?**

11 A. Mr. Golden and I and our wives own a home on Big Island but other than that all other
12 property we are involved with on Big Island is in the name of Folsom Ridge.

13

14 **Q. On pages 25-26 of her testimony, Ms. Orler seems to claim that the systems are**
15 **undersized and Folsom Ridge has agreed to do more than it can. Is that correct?**

16 A. Ms. Orler is mistaken in her assumption which is baseless. Folsom Ridge has never
17 agreed to more connections to the system than what it could deliver. Plans are underway
18 now for expansion of the system per DNR requirements.

19

20 **Q. Also on page 26 she discusses terms of the covenants and restrictions and interprets**
21 **them with respect to the responsible parties for paying for extensions to the systems.**
22 **What documents set out cost responsibility for extensions to the systems?**

1 A. The Commission should first know that Ms. Orler is not a member of the Association and
2 her property is not subject to restrictions. Also, the Commission should know that at the
3 meeting on January 29, 2007, the Association membership approved a resolution or
4 motion to amend, modify or terminate the amended and restated covenants and
5 conditions affecting the members. The documents that govern main extensions to both
6 systems are basically the Purchase Agreement and the Extension Agreement attached to
7 the Purchase Agreement. Under those agreements, Folsom Ridge or its successor will be
8 responsible for the costs of installing those extensions.

9
10 Q. **On page 27, Ms. Orler argues that the systems have not been successfully**
11 **constructed or managed effectively. What is your response?**

12 A. Her comments are completely refuted by the facts. The customers receiving and paying
13 for service have no objections to the quality of the service or the rates. The system is
14 fully operational within DNR design guidelines and operates as designed. Furthermore, I
15 will note that the Staff of the Commission in its testimony filed in Case No. WA-2006-
16 0480 did not find any serious fault with the management or operation of the system. On
17 page 27, Ms. Orler also refers to a development my church is undertaking. That
18 development is in the platting stage, no issues appear on water and sewer utilities, and is
19 completely and categorically different from the Big Island project. She does not state
20 how they are similar anyway. It should not have been mentioned.

1 **Q. Starting on page 28 through page 29 of her direct, Ms. Orlor discusses Folsom**
2 **Ridge's sale of property in the interior of the Island. What is your response to her**
3 **questions and answers on page 28 and 29?**

4 A. The sale price for the interior of the Island was supported by a current independent
5 appraisal, which the residents could examine, accept or reject. The offer was at fair
6 market value. Regarding the suggestion of fraud, Ms. Orlor apparently does not know
7 that this plan was not one Folsom Ridge created, but one suggested by Big Island
8 residents. The idea was eventually dropped but again, this was not contemplated by
9 Folsom Ridge. It was an idea of the neighbors from the beginning. The terms of the
10 proposal were suggested by those residents. All disclosures required were made by the
11 residents to Folsom Ridge as far as I know. No fraud was involved. Also, although it
12 makes little difference in my mind, I did not receive the email referred to in Ms. Orlor's
13 testimony. This email was attached to testimony Ms. Orlor filed in Case No. WA-2006-
14 0480 as CJO Schedule 16.

15
16 **Q. On page 30 of her direct, Ms. Orlor has concerns over the real estate being conveyed**
17 **in this transaction. What real estate is being conveyed?**

18 A. All real estate on which the wastewater collection plant has been constructed and the
19 water well and holding tanks have been constructed, in addition to easements, right-of-
20 ways, and other present interests in real property acquired by Folsom Ridge or the
21 Association used or useful in the collection, transportation and treatment of wastewater or
22 delivery and distribution of potable water. The area involved is being or has been
23 surveyed and commitments to issue title insurance for that ground have been requested

1 from the title insurer. Title insurance is to be obtained for the ground. This real estate
2 has nothing to do with the idea of selling property on the interior of the Island.

3
4
5 Q. **On page 31 of her direct, Ms. Orlor again states that the systems are not successfully**
6 **constructed or effectively or efficiently managed. What is your response?**

7 A. Her arguments and baseless conclusions aside in lines 5-8 and lines 15-17 of page 31,
8 which should be stricken, again the facts refute this. The systems are well managed and
9 operate well within DNR guidelines and regulations.

10
11 Q. **On page 31, Ms. Orlor talks about your involvement in the project. What is your**
12 **response?**

13 A. I was an investment partner at the beginning of this project as was Mr. Golden. That had
14 to change after Mr. Lees' departure from the Company. The residents or complainants
15 may have documents of some kind, but I was not directly involved in the construction of
16 these facilities from the inception of the project. Mr. Lees was the only member of the
17 company that was paid for his services. He was paid from April 1998 through April
18 2001.

19
20 Q. **On page 32, Ms. Orlor claims that Mr. Golden knew of the incorrect installation of**
21 **the now abandoned water line before Mr. Lees was terminated. What is your**
22 **response?**

1 A. First, Ms. Orlor has no basis upon which to say that. Second, Mr. Lees alleges that other
2 members of the LLC were aware of the incorrect installation before his termination date
3 but that is not true. Up to the time of his termination, Mr. Lees and the engineers
4 involved in the project advised that the lines had been installed in accordance with DNR
5 regulations. Ms. Brunk I believe addresses this in her direct testimony and her rendition
6 would be correct.

7
8 Q. **On page 33, Ms. Orlor questions when the Association came into existence and**
9 **started billing for services. She also raises the questions about ownership of the**
10 **facilities. What is your response?**

11 A. The Association was formed July 16, 1998. It was our belief and understanding that the
12 Association qualified for permits through DNR and that the permit requests submitted
13 accurately represented the ownership, per DNR requirements, of the facilities. I will
14 confess to some confusion on my part about what degree of ownership DNR expected the
15 Association to have in connection with the operation and maintenance of the system. I
16 believed that these forms were prepared accurately and we had advised people on the
17 Island of the ownership interests of Folsom Ridge and the Association. Nothing
18 dishonest was intended and for purposes of Case No. WA-2006-0480 and this case, the
19 nature of the ownership was fully reviewed. This case is designed to eliminate any more
20 confusion about ownership of the facilities and what entity can be the continuing
21 authority for wastewater and water distribution in the service area.

1 **Q. On page 34, Ms. Orlor states that complainants and interveners have requested**
2 **property titles to prove ownership of the utility. Have data requests for that**
3 **information been served in this case or in Case No. WC-2006-0082?**

4 A. No data requests asking for that information have been delivered. All data requests have
5 been answered or responded to.

6
7
8 **Q. On pages 34 -35, Ms. Orlor has questions about the legal effect of the declaration of**
9 **covenants and restrictions, and about consent of homeowners. What is your**
10 **response?**

11 A. Since Ms. Orlor is not a lawyer, she could not have the background to answer her
12 question at line 7 of page 34. I will once again repeat that no person has been
13 intimidated, coerced or threatened to sign covenants and restrictions. Regarding lines 1-
14 4 of page 35, I recall that Mr. McElyea advised that individuals who had connected to the
15 system should be considered members. Absent that classification, the individuals may
16 have been subject to disconnection. We were trying not to have to disconnect anyone and
17 place them in hardship. The water system was not involved.

18
19 **Q. On page 35, Ms. Orlor claims that requests have been made for membership and**
20 **billing information in this case. What is your response?**

21 A. As I have already mentioned, all data requests submitted have been answered or
22 responded to.

1 **Q. On page 32 of her direct, Ms. Orler discusses the tap fee, and the rates for service**
2 **charged on the Island currently. What is your response to her questions and**
3 **answers?**

4 A. From LLC's perspective, the residents have purchased a right to connect. It is an
5 intangible item. It is certainly not a piece of property Folsom Ridge can claim or
6 residents can claim they own. All rates charged are approved by the Board of Directors
7 of the Association and were decreased by the board upon submission of a budget and
8 expense report at the meeting in May of 2006.

10 **Q. On page 36, Ms. Orler questions if there is a reserve account at the Association, and**
11 **discusses how rates of a regulated company would be higher than those of the 393**
12 **Companies. What is your response?**

13 A. The Association carries a reserve account in the amount of approximately \$9,000. In my
14 direct testimony I may have said that the account is at \$7,000 and that is inaccurate. The
15 amount of the reserve account is subject to fluctuation depending upon expenditures and
16 credits to that account. It is true that we have warned the residents of the Island that the
17 rates of a regulated company would probably be higher than what are charged now and
18 what a 393 Company may charge. The feasibility study filed in Case No. WA-2006-0480
19 illustrated that. I think our early estimates were that people would pay 9% more because
20 of additional assessments and imposed by the Commission. To some this may be a "sky
21 rocketing" amount but I have never used such terms. Staff of the Commission proposed
22 rates for service in the WA-2006-0480 case nearly 100% higher than what is now being
23 charged.

1

2 **Q. On page 38 of her direct she refers to a \$7,000 line item in the Association's**
3 **financial statements. What is the significance of this line item.**

4 A. The \$7,000 is an amount owed to Folsom Ridge and it has been approved by the
5 Association's Board of Directors. This refers to collection of tap fees paid by new
6 members. The bylaws require that tap fees be passed through to Folsom.

7

8 **Q. On page 39-40, Ms. Orler argues that the vote of the Association's membership**
9 **approving the transaction is not legal under the bylaws of the organization. Was the**
10 **vote legal?**

11 A. Absolutely. Of course, Ms. Orler has no interest in the Association since she is not a
12 member and she cannot challenge the results of the election. No member has challenged
13 the election results and a challenge is most unlikely since the election was entirely
14 consistent with the bylaws of the Association. Also, votes of nonmembers were counted
15 not for purposes of an official Association tally but for the sake of this case. The report
16 of election in my direct testimony establishes the overwhelming support the residents of
17 the Island have for this application. The Association provided a vehicle for those
18 nonmember voices to be heard and for them to express their support. Their "vote" was
19 not part of the tally used for the Association's adoption of the relevant resolution of
20 approval.

21

22 **Q. On pages 41-43, Ms. Orler describes meetings the parties have had with the staff**
23 **and among themselves about the 393 Company proposal and meetings of residents**

1 **about these proposals. Were meetings with Staff held to describe the possibility of**
2 **this transaction.**

3 A. Yes there were such meetings. Because an application case (Case No. WA-2006-0480)
4 was pending, and deadlines for the filing of testimony were looming, we thought it was
5 important for the staff to understand what was being considered because if the transaction
6 were to be agreed to, the application case would no longer be needed and much time and
7 expense would be saved if the case could be either dismissed or its procedural schedule
8 suspended as the parties reached a conclusion on the Purchase Agreement terms. I
9 understand that Ms. Orlor and others had a meeting as well and Ms. Orlor has requested
10 information from the applicants in this case pertaining to the 393 Companies. The
11 applicants have no control over the property or documents in the possession of the 393
12 Companies and if the interveners or complainants need access to the bylaws of those
13 companies, and access to the Public Counsel's website is not enough, they can ask those
14 companies for the information.

15
16 Q. **On page 45, Ms. Orlor admits that she threatened the applicants with a law suit if**
17 **the transaction was closed. Has suit already been filed?**

18 A. Yes, it has. A two count petition against Folsom Ridge, the Association and the 393
19 Companies has been filed by Ms. Orlor and the other interveners in this case in the
20 Circuit Court of Camden County.

21
22 Q. **What steps will be taken by the applicants with respect to the petition?**

23 A. The applicants intend to vigorously defend the suit and are considering counterclaims.

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Q. **On page 47 of her testimony, Ms. Orler claims that the residents on Big Island were not adequately informed about issues involving the 393 Companies? Do you agree?**

A. No. The residents of the Island, particularly those who are connected to either the sewer or water system, have been observing these proceedings and have been aware of the steps Folsom Ridge and the Association have been taking to minimize the disruptions caused by complainants and interveners. The solution of transferring the systems to a locally controlled service provider has been well accepted by the residents my overwhelming margins. None who have approved or favored this approach have claimed lack of information about it.

Q. **On page 51, Ms Orler claims that a reserve account is not being transferred to the 393 Companies. Is this correct?**

A. Ms. Orler is wrong. As I testified in my direct, all accounts, including the reserve account will be transferred to the 393 Companies.

Q. **On page 52, she claims that in June 2005, DNR recommended installation of water meters. Is this correct?**

A. As far as I know DNR has never recommended installation of water meters on the system. A recommendation to that effect was made by the Staff in Case No. WA-2006-0480 but DNR did not.

1 **Q. On page 52, Ms. Orlor discusses a refund of contributions in aid of construction.**
2 **Are there any refunds proposed in this transaction?**

3 A. No, there are not. Tap fees paid by residents were in exchange for the right to connect to
4 the systems. They were not refundable. Had the tap fees not been paid by the residents,
5 the systems would not have been constructed to serve them. The application for
6 certification of a regulated company has been dismissed.

7

8 **Q. On page 53, Ms. Orlor claims that her property is also involved in the asset sale. Is**
9 **any property of the complainants or interveners being transferred to the 393**
10 **Companies?**

11 A. No, the complainants and interveners have no investments in Folsom Ridge and own no
12 property subject to transfer in the Purchase Agreement. I really do not understand what
13 she is referring to. If it is to the tap fee Ms. Orlor's predecessor in title paid for
14 connection to the system, that is an obligation which the 393 Companies will accept as
15 part of the transaction. It is not part of the property being transferred, but it is an
16 obligation being assigned to the 393 Companies. Their bylaws provide for the
17 connection.

18

19 **Q. Also, on page 54, Ms. Orlor states that she objects to the transfer. Do you know**
20 **what her objection is?**

21 A. That has never been clearly expressed to Folsom Ridge or the Association.

22

1 Q. On page 55, Ms. Orlor states that water and sewer service lines in the same trench
2 pose a health risk. What is your response?

3 A. If she is referring to water and sewer lines at Big Island, there is no risk. The
4 reinstallation of the water line has complied with all DNR requirements. Mr. Krehbiel
5 will address this in his testimony.

6
7 Q. Do you have any other comments to Ms. Orlor's testimony?

8 A. Yes. Ms. Orlor supplies a lengthy and argumentative summary of her testimony which is
9 not based in fact. She repeats many arguments that Folsom Ridge has heard for many
10 years and without prolonging this I will state that all of them have been addressed in my
11 testimony already. Her summary is not testimony. Folsom Ridge, the Association and
12 the 393 Companies have arrived at a way to provide water and sewer service to everyone
13 on Big Island at a reasonable cost. Ms. Orlor is not connected to either system. What she
14 proposes will not affect her rates but will affect the rates and charges to those who are
15 connected to the systems, and those connected overwhelmingly support a local resident
16 governed water and sewer system.

17
18 **Ben Pugh's Direct Testimony**

19 Q. On page 1, Mr. Pugh refers to Mr. Hiley's ability to vote in Association meetings.
20 He claims that allowing Mr. Hiley to vote is some kind of violation. What is your
21 response?

22 A. Official votes at Association meetings are limited to members and only the votes of
23 members will count, but at every meeting participation is welcome from everyone

1 attending including Mr. Hiley. Mr. Pugh is a voting member. Ms. Orlor has also been
2 allowed to participate at meetings and show approval or disapproval for items of
3 business.

4
5 **Q. On page 2 of his direct, Mr. Pugh seems to imply that you and Mr. Golden**
6 **improperly installed water and sewer lines that were part of a DNR notice of**
7 **violation issued in 1999. Is that true?**

8 **A.** No, as I have said above, Mr. Golden and I were not in the field at the beginning of this
9 project. Mr. Lees was the only member of the company that was paid for his services.
10 He was paid from April 1998 through April 2001. Mr. David Lees was the member of
11 our company in charge of field type responsibilities. In the litigation with Mr. Lees we
12 contend that Mr. Lees directed the construction company to install the lines in the same
13 trench and that was not authorized in any manner. Mr. Golden and I did not serve as
14 active members in the company or managers of this project until after April, 2001.

15
16 **Q. On page 3, Mr. Pugh refers to meeting with DNR representatives and with members**
17 **of the General Assembly. Who from Folsom Ridge or the Association attended**
18 **these meetings?**

19 **A.** No one. We were never invited to these meetings and did not know they took place.

20
21 **Q. Mr. Pugh also states at lines 15-16 of page 3 of his direct that there are reinstallation**
22 **problems on the systems that may have health risks. Is this true?**

1 A. No, the issues with DNR compliance have been fully rectified and the systems comply
2 with DNR restrictions and other regulations. Mr. Krehbiel and Mr. McDuffey will also
3 address this in their testimony.

4
5 Q. **Regarding the list of items Mr. Pugh enumerates on pages 3-4 would you tell the**
6 **Commission the action, if any, which has been taken on these matters?**

7 A. Mr. Krehbiel or Mr. McDuffey will address the issues pertaining to the separation of the
8 sewer and water valves. Mr. McDuffey can add to this point but there are shutoff valves
9 for each residence on the causeway to the best of our knowledge. The causeway water
10 main relocation was conducted in accordance with DNR requirements and is not a risk to
11 public health. Mr. Krehbiel will also address this. Regarding the distance between the
12 well housings and the treatment plant, Mr. Krehbiel has already addressed this in his
13 direct testimony.

14
15 Q. **On page 5, Mr. Pugh also starts a list of the violations issued by and other**
16 **correspondence from DNR. Have all these been addressed and rectified by Folsom**
17 **Ridge?**

18 A. First, I think it is important for the Commission to know that the list in Mr. Pugh's
19 testimony contains some duplication and includes matters that are not violations. Mr.
20 McDuffey and Mr. Krehbiel will be addressing these in their separate testimony and Ms.
21 Brunk has given the Commission the chronology of the notices of violation affecting the
22 systems in her direct testimony. With respect to the notice of violation that involved
23 improper disposal of old roofing, this involved Mr. Lees. He removed the shingles from

1 his own home and dumped them on Folsom Ridge's property. After learning of this, Mr.
2 Golden and I directed him to clean this up. Unfortunately, residents on Big Island have
3 used the areas around the wastewater treatment plant and the well as a dumping ground.
4 This is monitored very strictly at this time. Also, respecting the Settlement Agreement
5 Folsom Ridge entered with DNR, this agreement has been fully complied with and I
6 know of no violation of that agreement.

7
8 **Q. On page 7 and 8, Mr. Pugh discusses an altercation with Mr. Lees. What is your**
9 **response?**

10 A. Mr. Lees is no longer a member of the LLC and has not been for nearly 6 years. I would
11 never condone the behavior Mr. Pugh attributes to Mr. Lees.

12
13 **Q. On page 8 of his testimony, Mr. Pugh makes the statement that the water and sewer**
14 **systems on Big Island were illegally installed. Is that correct?**

15 A. The water and sewer systems on Big Island have been legally constructed and conform to
16 DNR requirements and continue to comply with DNR requirements.

17
18 **Q. On page 9, Mr. Pugh states that there are previous commitments and agreements by**
19 **Folsom Ridge with the homeowners which are in conflict with Chapter 393. Do you**
20 **know of any such agreements?**

21 A. I am not aware of any agreement with homeowners on Big Island that excludes from
22 consideration a nonprofit water or sewer company from providing services to residents.

1 Q. On page 10, Mr. Pugh states that he objects to the bylaws of the 393 Companies
2 because they have agreed to accept the liabilities of Folsom Ridge over the last 8
3 years. Is that part of the agreement with the 393 Companies?

4 A. No, Folsom Ridge and the Association are not transferring liabilities to the 393
5 Companies. Folsom Ridge and the Association are transferring at no cost to the 393
6 Companies all the assets used to provide water and sewer service on the Island and upon
7 the date the transfer closes, the 393 Companies will be in charge of operating and
8 maintaining the systems and will be responsible for their own liabilities in connection
9 with those duties.

10
11 Q. Regarding page 11 of Mr. Pugh's direct, he summarizes his testimony in an
12 argument form. Do you have any comments?

13 A. Folsom Ridge has kept its commitments to homeowners on Big Island despite the
14 objections and complaints Mr. Pugh and others continue to raise without basis. This
15 application promises to be a way for persons connected to the systems to operate and
16 maintain them under their own control and management at rates that they approve.

17
18 **Ms. Fortney's Testimony**

19 Q. On page 2 of her testimony Ms. Fortney discusses her father's status with the
20 Association and his payment of connection fees. What is your response to her
21 questions and answers on page 2?

22 A. Just as everyone else, Ms Fortney's father was sent information and ratification forms
23 several times but he chose not to join the Association. The previous owner of 3298 Big

1 Island Drive chose not to ratify the covenants and restrictions and they did not appear on
2 the abstract of title or record of title to the property. The Association was formed in July
3 of 1998 and was in business in 1999 when Ms. Fortney's father bought his Portage Park
4 address. Originally, the Association was prepared not to charge customers until they
5 hooked up. But in the summer of 2000, a group of residents met with Folsom Ridge and
6 the Association in an effort to negotiate a change to the covenants that would encourage
7 Island wide membership. This group proposed a number of changes to the covenants and
8 restrictions, and almost all were agreed to. One change we did not agree to involved the
9 nature and length of the warranty on the water and sewer systems. This group promoted
10 the change in policy on deferring charges until hook up.

11
12 **Q. On page 3, Ms. Fortney states that Folsom Ridge tried to stop the closing of 1554 Big**
13 **Island Drive. Is this true?**

14 A. No, it is not. We were asked by the closing company to provide information on
15 assessments just like any other closing that happens with a reputable title company. Mr.
16 McElyea responded accordingly and advised of the obligations under restrictions of
17 record. In providing the amount of the assessments due, it was thought the request was
18 for two lots (lots 8 and 9) and not just for the 1554 Big Island Dr (PP3 lot 9) address.
19 That is why the amount looks doubled to Ms. Fortney.

20
21 **Q. On page 4 of her direct, Ms. Fortney discusses more of the circumstances on the**
22 **closing of 1554 Big Island Drive. What is your response to this page of her direct?**

1 A. Without adding great detail, it is best to say that the new owners were not confused about
2 their obligations and did hook up to both systems and are members of the Association.
3 They paid required fees and facilities were relocated for their convenience. Regarding
4 the entity to which fees should be paid, the bylaws of the Association provide that
5 Folsom Ridge receives tap fees up to a ceiling amount of \$300,000. Regarding the back
6 fees owed, the Board of Directors for the Association resolved to forgive them.
7

8 Q. **On page 5 of her direct, she refers to the meeting where she and Ms. Orlor**
9 **participated in May of 2005, and claims the Association and Folsom Ridge coerced**
10 **and intimidated her. What is your response?**

11 A. As I testified previously, Folsom Ridge and the Association have never coerced,
12 threatened or intimidated Ms. Orlor or Ms. Fortney. I explained the circumstances of the
13 May 2005 meeting earlier and what occurred there. Ms. Fortney's remarks about the
14 legality of the meeting processes used are inaccurate; the Association has encouraged the
15 widest participation but only the votes of members count at these meetings.
16

17 Q. **Ms. Fortney also discusses the closing on another house, 3298 Big Island Drive, on**
18 **page 5 of her direct. Did the Association or Folsom Ridge respond to the title**
19 **company's requests as it did in the previously mentioned closing?**

20 A. Yes, again the closing company called for a statement of the Association dues prior to
21 closing and Ms. Fortney properly prepaid the balance of the quarter. The Association
22 and Folsom Ridge do not interfere in closing transactions but continue to cooperate with
23 title companies and closing agents in providing requested information.

1

2 **Q. On page 6 through 7 of her direct, Ms. Fortney discusses a repair to a water or**
3 **sewer tap on Lot 8, Portage Park. Did Folsom Ridge make the repair?**

4 A. If I understand the situation described by her question and answer correctly, yes, Folsom
5 Ridge was able to make the necessary repair or upgrade. We also made a gravel pad for
6 her to park her motorhome on adjacent to the road. I think the matter she refers to is the
7 same as Ms. Orlor's complaints about running a tap across the road. Since both had
8 decided that they were not going to be members of the Association or pay charges as
9 others were doing, there was no justification to run a line across the road until they
10 wanted to hook up at a later date. We assured them that they still had a place reserved
11 and we would run the line at that time. Since the old waterline was abandoned there was
12 no need to remove it from the box with the sewer tap in it.

13

14 **Q. On pages 7 -10 of her testimony, Ms. Fortney accounts for the information she**
15 **received before the Association vote on January 29, 2007. Is Ms. Fortney a member**
16 **of the Association and does she receive information regularly from the Association?**

17 A. Ms. Fortney has chosen not to be a member of the Association although she and her
18 father have been given ample opportunity to be a part of the Association. Since Ms.
19 Fortney is not a member, the Association is under no obligation to send her
20 documentation affecting the Association's business but it appears that she received
21 considerable information nonetheless. As a nonmember she has no right to interrupt
22 elections undertaken by the membership but for the meeting in January, 2007, ballots on
23 the proposition involved were welcome from nonmembers, not for purposes of the

1 Association's official vote, but for purposes of measuring support for the transfer of
2 assets to the 393 Companies. Conduct of the elections is a matter for the Association's
3 officers and this was accomplished without offending the Association's bylaws.

4
5 **Q. On page 12, Ms. Fortney suggests that the 393 Companies have doubts about the**
6 **transfer and that there does not seem to be an adequate reserve established for the**
7 **393 Companies. Do you agree?**

8
9 **A.** My review of the Purchase Agreement and the exhibits attached, along with Mr. Snyder's
10 testimony filed in this case suggests to me that the parties show no reluctance to close.
11 Closing is scheduled for no later than March 31, 2007. Regarding the reserve account, I
12 have mentioned already that the reserve account of approximately \$9,000 will be
13 transferred. If that amount is not sufficient, then when Ms. Fortney becomes a member
14 of the 393 Companies, she can suggest a way for the reserve account to be increased or
15 decreased, subject of course to the votes and rights of other members. That is the benefit
16 of this type of organization.

17
18 **Q. On pages 14-15, Ms. Fortney engages in what appears to be a summary argument of**
19 **her position. Do you have a response?**

20 **A.** I would agree with her that her actions and those of other complainants have caused a
21 cloud on the value of their property in the area, despite the availability of state of the art
22 water and sewer facilities available for their use. Otherwise, what she provides on those
23 pages is not testimony.

1

2 **Q. Does this conclude your rebuttal testimony?**

3 **A. Yes.**