

1 JUDGE STEARLEY: We are back on the
2 record and we are going to do a round of recross
3 examination of Mr. MacEachen. Starting with
4 complainants, Ms. Orlor, do you have any questions
5 based upon cross-examination?

6 MS. ORLER: I do, your Honor.

7 RECROSS-EXAMINATION BY MS. ORLER:

8 Q. Mr. MacEachen, can you tell me the date
9 that Big Island began dispensing water?

10 A. No, I can't.

11 Q. Approximately?

12 A. I believe it was -- it was during 2000.

13 Q. So the year 2000 then?

14 A. I believe so.

15 Q. Okay. So if they began dispensing water
16 in the year 2000 but they're still currently waiting
17 for a permit, so would that mean that they've been
18 dispensing water for seven years without a permit?

19 A. Because of the litigation currently
20 going on, the determination of ownership, on the one
21 hand you could say that they have been dispensing
22 without a permit. I believe they have applied for a
23 permit but it has not been issued until it could be
24 determined who, in fact, was going to assume the role
25 of owner and operator of the system, whether it was

1 to be Big Island Homeowner Association or Folsom
2 Ridge.

3 Q. Can you tell me when the application was
4 made --

5 A. No, I don't have --

6 Q. -- for the permit?

7 A. -- I don't have that date immediately in
8 front of me.

9 Q. So you're telling me, then, the reason
10 that the permit, then, has not been issued is it's
11 awaiting the litigation?

12 A. Right.

13 Q. Okay. But there -- there hasn't been
14 litigation ongoing for seven years; would that be
15 correct?

16 A. No, but there has been, for a sufficient
17 amount of time that we chose not to -- we stopped the
18 process, if you will, without issuance, and Big
19 Island is not unusual in that respect.

20 We have other systems where when there
21 was an issue of ownership and control, we have not --
22 we have not progressed with the issuance of a permit
23 to dispense. They're, so to speak, in limbo state at
24 this point.

25 Q. Maybe I can ask my question this way:

1 Can you tell me the date that the ownership and
2 control of the utility came into question with DNR
3 with regards to the issuance of this permit?

4 A. I believe that was at least -- at least
5 a point in time when we found that there were -- that
6 there was construction occurring that had not been
7 covered by construction permits. We began to
8 question who was going to be the responsible party.
9 We did not have that information, we did not proceed.

10 We do -- at this time we do not have a
11 temporary or other type of operating permit. It's an
12 operating permit or there's no permit. But we have
13 not made it an enforcement issue because of the
14 ongoing issues that we're here discussing today.

15 Q. Now, you made mention, though, however,
16 of the fact that you've also tied this to
17 construction permits as well. Was that my
18 understanding?

19 A. No.

20 Q. Okay.

21 A. The issuance -- well, the issuance of a
22 construction permit -- I mean, I'm sorry. The issue
23 of the permit to dispense being tied to a
24 construction permit, that is -- that is not what I'm
25 saying. We do not -- there is no tie between them.

1 The permit to dispense is based on -- typically,
2 usually, based on the finalization of construction to
3 appropriate standards. Once it's been determined
4 that the system was constructed within -- within
5 parameters established by the design guide that I
6 referred to earlier, then we will issue a permit to
7 dispense.

8 In this particular case, because there's
9 an issue of authority, that's -- that issue is what's
10 holding the issue of a permit to dispense.

11 Q. And how were you made aware of the issue
12 regarding authority?

13 A. I'm sorry. I don't quite understand
14 what you're asking. How was I made aware or the
15 department?

16 Q. Yes, or the department, how was the
17 department made aware of this issue of authority?

18 A. Well, I think when the complaints began
19 to come in that there were inconsistencies or
20 noncompliances in the construction by the system of
21 the residents, at that point we began to examine what
22 steps we should next be taking with regard to
23 construction permit issuance, and that just put
24 everything on hold as far as any issuance of any
25 permit to dispense.

1 Q. Okay. I'm blonde so I'm going to go
2 back. You've used the word construction permits
3 again in conjunction with the water -- the permit to
4 dispense water. So that was also a trigger, then, in
5 this?

6 A. That was certainly, yes, it was a
7 relevant factor.

8 Q. Okay. All right. Thank you. Now, you
9 also discussed in your earlier conversation with
10 Mr. Comley with regards to boil -- water boil orders.

11 A. Boil orders.

12 Q. Boil orders for water.

13 A. Uh-huh.

14 Q. Is that something that you are made
15 aware of personally when -- when a -- when that has
16 been issued by the utility?

17 A. I'm in the -- yes, I'm in the chain.

18 Q. And how -- can you explain that chain or
19 that process to us, please, of your notification?

20 A. When -- when it's determined that either
21 through -- and there are many reasons, but first and
22 foremost, microbiological exceedances or losses of
23 pressure are the two most common reasons for a --
24 issuance of a boil order, and there are two levels of
25 boil order.

1 There is a boil advisory which is issued
2 by the local entity, in which case we have virtually
3 nothing to do with it other than to -- to ensure that
4 the information has been disseminated, but we have no
5 control over the lifting of that boil order other
6 than to ensure that subsequent sampling shows the
7 water to be safe before the boil -- that boil
8 advisory is lifted.

9 If, on the other hand, we find fecal
10 coliform or the system experiences pressure losses
11 resulting in below 20 -- below the 20-pound minimum,
12 then that is a mandatory issued by the department and
13 we will determine when that boil order will be
14 lifted. And usually that's lifted only after
15 reestablishment of the -- of appropriate pressures,
16 reestablishment and maintenance of appropriate
17 pressures, or when microbiological testing has shown
18 the system to be free of contaminant.

19 Q. And then from the department's
20 standpoint when a boil order is issued by the
21 department, you are basing your information, then, on
22 the reporting structure that we spoke about earlier;
23 would that be correct?

24 A. Yes.

25 Q. Okay. And when we discussed this

1 earlier, I had asked you about the lag time in the
2 reporting structure. So how important is it that a
3 boil order that is issued by the department be issued
4 immediately when that information is based on or
5 taken from the reports that you're getting where
6 there might be a week lag time?

7 A. Generally the boil orders that we issue,
8 and in particular for microbiological contaminants,
9 are issued as a direct result of analytical positive
10 results for fecal coliform, E. Coli. That
11 information is transferred from the laboratory when
12 they get positives for E. Coli or fecal coliform.
13 The laboratory immediately contacts the regional
14 office who, in turn, puts the boil order in place and
15 then contacts us.

16 As far as lag time, once -- once the
17 sample has been analyzed and the results finalized,
18 there's virtually no lag time. It's -- there may be
19 a lag time of a couple hours, but I don't believe
20 there's a lag time of days or certainly not weeks.

21 Q. So at that point, then, you're not
22 waiting on the written format to be received by your
23 office; you're contacted either electrically or via
24 telephone?

25 A. By the regional -- by the regional

1 office, yes, by -- most often by e-mail.

2 MS. HEINTZ: Your Honor, can I -- I'm
3 sorry. Can I interrupt the line of questioning here?
4 I agree maybe it may be important to know whether or
5 not boil orders were issued for this system, but I
6 don't think we need to go into this level of detail
7 about the DNR's process. I don't believe that's
8 relevant.

9 JUDGE STEARLEY: I would agree. I
10 believe Mr. MacEachen had testified that he did not
11 recall that there were any boil orders issued in
12 response to this system, so I don't believe we need
13 to know the detail of how this works. Ms. Orlor, are
14 you leading somewhere with this line of questioning
15 that would make this more relevant?

16 MS. ORLER: Yes, sir, your Honor,
17 because I'm holding in my hand a letter that was
18 circulated to residents asking them to boil water,
19 and I'm trying to find out, then, if this was locally
20 issued, and if so, what type of notification went to
21 the department regarding this.

22 JUDGE STEARLEY: And has this letter
23 been marked as an exhibit --

24 MS. ORLER: No, it has not.

25 JUDGE STEARLEY: -- and entered in this

1 matter?

2 MS. ORLER: No, it has not.

3 JUDGE STEARLEY: Mr. MacEachen's
4 testimony is to his knowledge. He doesn't know that
5 there's been a boil order issued. So --

6 MS. ORLER: All right. May I ask him
7 the type, then, of notification going back to the
8 local level? Because his department has nothing to
9 do with that.

10 JUDGE STEARLEY: And I think you just
11 answered your own question. His department has
12 nothing to do with that so I don't see where the
13 question would be relevant.

14 MS. ORLER: Okay. But I thought that he
15 indicated that they should receive notification of
16 it, however.

17 MS. HEINTZ: Mr. MacEachen has testified
18 that he doesn't have any knowledge of any boil orders
19 issued for Big Island specifically, so his
20 knowledge -- the fact that his department should get
21 notification --

22 JUDGE STEARLEY: Well, and I believe he
23 just gave us more detail than we needed on the
24 notification process as well. I'm going to sustain
25 the objection.

1 MR. MILLS: Your Honor, would it be
2 allowable for Ms. Orler to show the document to the
3 witness to see if that refreshes his recollection as
4 to whether or not there were boil orders?

5 JUDGE STEARLEY: I'll allow you to show
6 the document to Mr. MacEachen.

7 MS. ORLER: Would you like to see it
8 first?

9 JUDGE STEARLEY: I would like to see it
10 first. I will allow you to show those to
11 Mr. MacEachen.

12 THE WITNESS: Should I answer the
13 question, your Honor?

14 MR. COMLEY: What's the question?

15 JUDGE STEARLEY: It would be a different
16 question at this point.

17 BY MS. ORLER:

18 Q. Does this refresh your memory with
19 regards to boil orders, Mr. MacEachen?

20 A. It certainly refreshes my memory but
21 more to the point, it points to who issued and
22 whether or -- whether or not we would have seen the
23 boil notification.

24 Q. Okay.

25 A. Okay?

1 JUDGE STEARLEY: Okay. And that is the
2 extent of the testimony I'm going to allow on this
3 matter.

4 MS. ORLER: Thank you.

5 BY MS. ORLER:

6 Q. Mr. MacEachen, approximately a little
7 over a month ago due to the ice storm we, as
8 residents on Big Island, were without electricity for
9 approximately two days.

10 MS. HEINTZ: Your Honor, this is
11 testimony. Is there a question?

12 BY MS. ORLER:

13 Q. Would the loss of electricity over an
14 extended period of time cause a drop in the water
15 pressure below the 20 psi that we spoke about
16 earlier?

17 JUDGE STEARLEY: Okay. The prior
18 remarks to that question will be stricken and
19 Mr. MacEachen, you may answer that question.

20 THE WITNESS: Loss of pressure over an
21 extended period of time would definitely have --
22 could potentially, I guess I should say, have an
23 effect on pressure throughout the distribution --
24 water distribution system. I should -- I should
25 qualify that. Depending on the number of people in

1 residence during that period of time, the daily
2 demand on the system and the storage capacity of the
3 system, you may or may not have lost -- or had your
4 pressure drop below the minimum 20 pounds.

5 If you were -- if you were -- if the Big
6 Island area was 20 percent occupied and at the time
7 the electricity went out you had a full tank of
8 water, you may not have seen a pressure loss. It
9 just depends on all -- all of those factors. So it's
10 difficult to answer your question specifically.

11 BY MS. ORLER:

12 Q. All right. Thank you. Now, you stated
13 in your earlier conversation with Mr. Comley that the
14 Attorney General's Office closed the settlement
15 agreement file on September the 22nd of '04; is that
16 correct?

17 A. That is not correct.

18 Q. Okay.

19 A. He -- the Attorney General's Office did
20 not close the settlement agreement file. The
21 Attorney General's Office closed its files pertaining
22 to Big Island. The settlement agreement is a part of
23 those files. And yes, you are correct, it was -- it
24 was closed -- that file was closed on September 22nd,
25 2004, meaning at that time that the Attorney General

1 would be taking no further action in the matter at
2 that time.

3 Q. And would there be anything that would
4 prompt further action in that matter to reopen the
5 file?

6 A. There certainly could be, yes.

7 Q. And what would that be?

8 A. Any -- any further violations of
9 consequence or repeat, any further indications that
10 there was -- that there was information beyond what
11 was originally available at the time of generation of
12 the settlement agreement could cause us to revisit
13 and -- and reissue the settlement agreement under
14 different terms or different requirements.

15 The September 22nd closure was merely
16 the fact that they are closing their file, they've
17 done everything they can short of actually
18 litigation. They have no further interest unless we
19 find further violation.

20 Q. Are you aware of the notice of violation
21 that was issued on June the 28th of '05?

22 A. To be perfectly honest with you, I see
23 so many notices of violation in one day's period, I
24 can't -- I have to say no, I am not familiar with
25 that at this time. I don't doubt that there would --

1 there might have been one, but I don't have specific
2 knowledge.

3 Q. Would the type of violation that was
4 issued on June the 28th of '05 be dependent on
5 whether or not to reopen the file?

6 MS. HEINTZ: Excuse me, your Honor, but
7 Mr. MacEachen has testified that he is not aware of
8 the notice of violation that was issued on June 28th,
9 2005.

10 JUDGE STEARLEY: He has testified to
11 that and he also cannot testify as to what the
12 Attorney General's Office may or may not do;
13 therefore, it will be sustained.

14 BY MS. ORLER:

15 Q. One more question. You've made several
16 visits to Big Island, you're fairly familiar with Big
17 Island; would that be --

18 A. I'm fairly familiar with portions of Big
19 Island.

20 Q. All right. In your visits to Big Island
21 with regards to the utility that's there, have you
22 given any consideration to the tap placements, where
23 the taps are placed for service lines to residences
24 coming off the mains?

25 A. Taps into the water mains?

1 Q. Well, the taps where the -- the -- the
2 water mains come to the tap and then from the tap go
3 to a residence?

4 A. Not -- not sure what you mean if --
5 about whether or not we have any concerns about that.
6 Are you talking proximity to one another? Too close
7 together?

8 Q. Can you tell me if the tap placements
9 are on an easement or well within the bounds of the
10 lot owner?

11 A. That I can't tell you.

12 Q. Okay.

13 A. That I can't tell you.

14 Q. All right. Thank you.

15 JUDGE STEARLEY: Thank you, Ms. Orler.

16 Recross examination. Mr. Pugh, do you
17 have any additional questions based upon the
18 cross-examination of Mr. MacEachen.

19 MR. PUGH: No, your Honor.

20 JUDGE STEARLEY: All right.

21 Ms. Fortney?

22 MS. FORTNEY: No questions, your Honor.

23 JUDGE STEARLEY: Recross, Office of
24 Public Counsel?

25 MR. MILLS: Just a few, your Honor.

1 RE CROSS-EXAMINATION BY MR. MILLS:

2 Q. At the risk of making everybody really
3 hungry, we're going on here, I'm gonna take one more
4 shot at this mystery picture. Mr. MacEachen, do you
5 still have these pictures in front of you?

6 A. I do, yes.

7 Q. The one at the bottom is the one that
8 everyone has been struggling with, and let me -- let
9 me suggest to you what it might be, and then this is
10 sort of, you know, one of those pictures where it's
11 either wine glasses or profiles, and depending on how
12 you look at it, you may see it one way or the other.
13 Let me suggest --

14 JUDGE STEARLEY: Mr. Mills --

15 MR. MILLS: I'm sorry.

16 JUDGE STEARLEY: -- just for clarity.

17 MR. MILLS: This is Exhibit 63 --

18 JUDGE STEARLEY: Right. And are you
19 referring to the one on the bottom on what I believe
20 is about page 5 of that document?

21 MR. MILLS: Yes, that's correct.

22 JUDGE STEARLEY: Okay.

23 MR. MILLS: It shows -- it shows two --
24 the picture on the top is a manhole cover labeled
25 "Sewer." The picture on the bottom shows two pipes

1 in close proximity.

2 JUDGE STEARLEY: All right. Thank you.

3 BY MR. MILLS:

4 Q. Let me suggest to you that the bottom
5 pipe in the bottom picture at the far right may be a
6 shut-off valve because you can see what appears to be
7 a handle there. From there, there's a short length
8 of pipe going into a right-angle elbow, which then
9 goes down from the picture into a check valve which
10 is the black circle that you see there.

11 At the bottom of the check valve,
12 there's another right-angle valve, and the -- a pipe
13 of a similar diameter continues off to the left side
14 of the picture that looks like a smaller diameter
15 because of the angle of the picture; it's further
16 away from the camera.

17 A. Uh-huh.

18 Q. With that description, does that seem
19 like it may be what that picture actually shows?

20 A. It could be.

21 Q. Could be.

22 A. It's -- I still maintain that it's
23 difficult to tell because I've not seen a check valve
24 of that configuration before, but I'm not an absolute
25 authority on everything.

1 Q. Okay. But that -- that would -- there's
2 nothing that you see here that would be inconsistent
3 with that --

4 A. No.

5 Q. -- configuration?

6 A. No.

7 Q. Okay. Now, I think in response to one
8 of the questions from Mr. Comley, he asked you
9 whether there was a manufacturer's name on the pipe.
10 He was referring to a picture of the blue pipe and
11 your answer was no. Did you mean by that that there
12 is no name apparent in the picture, or that that type
13 of pipe never is stamped with a manufacturer's name?

14 A. I meant that there was -- I could not
15 determine a name of a manufacturer on the pipe shown
16 in that picture.

17 Q. Okay.

18 A. Generally, pipe of all types will have
19 several numbers; they may not always have a
20 manufacturer. In fact, most often they don't have a
21 manufacturer name, but somewhere within the pipe
22 codings is a code relevant to the person -- the
23 company that manufactured it. Of course, with the
24 lack of definition in the picture it's impossible to
25 see those numbers. I have no way of knowing who

1 might have manufactured that.

2 Q. But if you had a piece of the pipe
3 itself of sufficient length to -- because the stamps
4 are repeated every few feet or so on the length?

5 A. Yes. Yes.

6 Q. If you had a sufficient length to obtain
7 that information, you could determine a lot about the
8 physical characteristics of that pipe; is that
9 correct?

10 A. Absolutely, yes.

11 Q. For example, the burst strength?

12 A. Yes.

13 Q. And from there you could extrapolate the
14 durability of the pipe --

15 A. Absolutely.

16 Q. -- and the longevity --

17 A. Uh-huh.

18 Q. -- under certain circumstances? Okay.

19 And just to clear something up, I think -- I think
20 you misspoke earlier. Can you just tell me, is it
21 correct that the water in New Hampshire is in places
22 very corrosive and the water in Missouri is generally
23 not corrosive?

24 A. That is correct, yes.

25 Q. I think -- I think that may have been

1 turned around at one point.

2 A. Oh.

3 Q. Now, with regard to the system at Big
4 Island, is it your understanding that the sewer
5 system that -- the residents that are connected to
6 the community sewer system still each have a septic
7 tank on their own property; is that correct?

8 A. That would -- that would be consistent
9 with a pump system, yes.

10 Q. Okay.

11 A. Which I believe Big Island is.

12 Q. Okay. Now, are there different types of
13 pump systems?

14 A. There are different -- there are
15 different configurations, but they generally all
16 adhere to the same engineering principle, I believe.
17 Basically, you come out of the house into a -- some
18 form of holding tank in which the solids deposit.
19 The effluent, as it leaves that tank, may go into
20 another tank for final -- final sedimentation and in
21 through a grinder pump, or there may not be an
22 intermediate tank. It may go out of the primary tank
23 right into the grinder pump and then into the -- to
24 be pumped onto the sewer main.

25 Q. Okay. And depending on the original

1 configuration before it's pumped, there may be
2 different types of pumps used; is that correct?

3 A. Yes.

4 Q. And in fact --

5 A. All following essentially the same
6 engineering principles. In other words, they're all
7 going to -- I doubt very seriously that you're going
8 to find a positive displacement pump, a piston pump,
9 in -- serving in a facility like what the residential
10 settings are in Big Island. You're going to
11 generally find that it's probably some type of a
12 centrifugal pump. It just -- pumps will differ from
13 one manufacturer to another.

14 Q. Is a -- is what you're referring to as a
15 grinder pump the same as a Macerator pump?

16 A. Yes.

17 Q. Okay.

18 A. Yes.

19 Q. And that is designed specifically to not
20 only push material through the pipe, but chop up
21 solids?

22 A. It's -- first and foremost is to grind
23 anything that might have escaped from the holding
24 tank into smaller particles that could be more easily
25 pumped, and then after that grinding it's pumped on

1 through the system and out to the mains.

2 Q. Okay. So these types of systems never
3 would use simply a water pump?

4 A. I'll say no but I'll qualify it.

5 Q. Okay.

6 A. Water pumps are also usually centrifugal
7 pumps, so they may in configurations be slightly
8 different, but in principle they operate the same
9 except that the Macerator or grinder pump has a set
10 of cutter teeth or a cutter wheel, something to
11 actually grind up any escaping solids.

12 Q. Now, in terms of pressure testing on a
13 system like Big Island's, is the system tested at
14 different locations at different times on a regular
15 schedule for pressure?

16 A. Not ongoing. It's usually done at the
17 time of finalization of construction, either of a
18 segment of the system, or occasionally if it's not a
19 very big system, I have seen instances where the
20 whole system is tested all at one time. Big Island
21 would not be a system that would be tested in its
22 entirety one time. And we do not require pressure
23 testing on a periodic basis once the system is in
24 operation.

25 Q. Okay. And I think you testified that

1 one of the things that can trigger a boil order is a
2 drop in pressure?

3 A. Is a drop in pressure, correct.

4 Q. How -- how would the operator know of
5 such a drop in pressure?

6 A. There -- there should be -- well, first
7 of all, he's gonna get a lot of complaints. That's
8 probably the first and foremost way that operators
9 are alerted to a system pressure loss. In more
10 developed systems at various points throughout the
11 system, there will be pressure gauges installed at
12 facilities to monitor, and when -- as the pressure
13 fluctuates, if it's necessary, it can be reported to
14 the operator for determination of what caused the
15 pressure -- pressure drop.

16 Q. Do you believe those types of devices
17 are present at the Big Island system?

18 A. I'm not aware -- I'm not aware that they
19 are.

20 Q. Okay.

21 A. I'm not aware that they are.

22 Q. So if -- if the operator is alerted by
23 residents that there's been a drop in pressure, would
24 it be from your perspective appropriate for the
25 operator to go out and do pressure testing --

1 A. Absolutely.

2 Q. -- on the system?

3 A. Absolutely.

4 Q. And how is that done?

5 A. There are -- there are several ways.

6 Probably the best way to do it would be to find an
7 outside hose faucet and take an appropriate fitting
8 with a pressure gauge on, attach it to the hose bib,
9 as I call them, and open the valve, let it equalize
10 and then read the pressure.

11 And pressure will vary. You know, you
12 may have some places, especially in facilities like
13 Big Island where there's such an elevational
14 difference, you may have a pressure loss at the top
15 of the hill and yet folks at the bottom of the hill
16 maintain, you know, they don't notice any pressure
17 change.

18 Q. So assume for me that there's a
19 situation where the operator goes out and does find
20 that there is pressure noticeably below 20 psi. What
21 would -- what would the operator's next step be?

22 A. His next step would be first of all to
23 contact the -- one of our regional offices or our
24 emergency response program to formally advise the
25 regulatory agency that there may be a pressure

1 problem and that something should be, you know, a
2 boil order may be coming.

3 His next step would be to -- he can
4 elect to do the next step or we'll do it for him, and
5 that would be notification of media, usually
6 electronic media, radio, television, so that there
7 can be public service announcements put out. He
8 certainly should be in touch with the ownership of
9 the system because they'll be the ones to have to --
10 or they'll be the ones that would be held responsible
11 for necessary repairs to be made.

12 Q. Okay. Now, in a -- on a system like Big
13 Island where there are a number of homeowners served
14 through individual wells rather than the community
15 wells, can a -- a leak from either the sewer lines or
16 the sewer plant potentially contaminate those
17 individually owned wells?

18 A. It would depend on the location of the
19 private well, you know, the proximity to the sewer
20 plant or sewer mains. Generally, our design guide
21 criteria and accepted standards nationwide is that
22 you should maintain a 300-foot separation between any
23 private well and a wastewater pump -- wastewater
24 treatment plant, wastewater pump station, lift
25 station, septic tanks.

1 There are a number of provisions, yes,
2 but in answer to your question, yes, a leaking
3 wastewater system could, if everything worked just
4 right and the soil conditions were appropriate over
5 time, yes, it could -- it could cause a problem with
6 a private well.

7 Q. Now, the 300 feet that you -- that you
8 mentioned, is that a hard and fast rule?

9 A. That is, once again, part of the design
10 guide.

11 Q. So it's --

12 A. So it's not a regulation.

13 Q. Okay. So there -- there could be
14 instances around the state and on Big Island in
15 particular where the proximity is closer than 300
16 feet and still meet DNR guidelines?

17 A. Yes. Yes.

18 Q. Okay. Do you know if there are on Big
19 Island such situations?

20 A. I am not aware because we typically are
21 not advised of the location of private wells. We
22 have no authority over them so we don't know where
23 they are in all cases.

24 Q. Okay.

25 A. I would have to say that, no, we're not

1 knowledgeable of any -- any occurrence of that.

2 Q. Would you be knowledgeable if the -- if
3 the community water treatment facilities were closer
4 than 300 feet to the community sewer treatment
5 facilities?

6 A. We should know. That should be
7 established at the time of construction of the two
8 plants or one plant after the pre -- you know,
9 previous construction of the other plant. That would
10 be part of the criteria examined in the -- in an
11 engineering report and plans and specifications for
12 the construction of either a wastewater plant or a
13 drinking water plant.

14 Q. Because those are merely guidelines,
15 that wouldn't necessarily prohibit the construction
16 going forward in closer proximity than 300 feet?

17 A. We would probably -- we would probably
18 not -- we would probably not approve the plan if --
19 unless there were very special considerations taken
20 to prevent any cross-contamination, and those --
21 those considerations would have to be spelled out.

22 Q. Okay.

23 A. I won't say it absolutely never happens
24 anywhere in the state of Missouri, but I -- it is
25 part of our -- our review of construction projects.

1 Q. And for -- for the purposes of your
2 appearance today and your deposition over the last
3 two sessions over the last month or so, did you
4 familiarize yourself with the Big Island system?

5 A. Beyond what's in the file, no.

6 Q. Okay.

7 A. Personal trips to the Big Island area,
8 no, I did not.

9 Q. I just meant in general.

10 A. No. I have reviewed the file on -- on
11 occasions as they -- as time allows, or certain
12 portions of.

13 Q. And I think in response to a question by
14 Mr. Comley, I believe the phrase he used was
15 "anything unsatisfactory." He asked you whether, to
16 your knowledge, DNR has communicated anything
17 unsatisfactory to Folsom Ridge that has not yet been
18 corrected. Do you recall that question?

19 A. I do recall the question.

20 Q. And your answer was not that you're
21 aware of?

22 A. Not that I'm aware of.

23 Q. Mr. MacEachen, if I could get you to --
24 in that package to turn to Exhibit 93, and I'd like
25 you to look at page 3 of that exhibit.

1 A. (Witness complied.) 93, page 3?

2 Q. Yes. This is a page of four numbered
3 comments with Clinton Finn's signature at the bottom.
4 Do you have that document?

5 A. Uh-huh.

6 Q. Can I get you to look at No. 2 on that
7 page and let me know if you consider that to be
8 communicating something unsatisfactory to Folsom
9 Ridge?

10 A. I would not consider that a -- an -- a
11 violation of the design guide sufficient to rate an
12 unsatisfactory condition. It's a recommendation to
13 Folsom Ridge that every -- every house lot, every
14 individual user of the system should have their own
15 shut-off. We have many systems around the state
16 where you have no shut-offs whatsoever at property
17 line on service lines going in.

18 Is it an unsatisfactory condition? I
19 don't know that I'd call it an unsatisfactory
20 condition. I would call it a -- I would call it a
21 condition that should be addressed and corrected at
22 some time in the future but not immediate future. It
23 certainly does not pose a risk to the health or
24 safety of the users of the system, and it does not
25 pose a risk to -- for cross-contamination of the

1 water system from a private property so long as the
2 water system, of course, is maintaining adequate
3 pressure.

4 Q. Let me back up a step and define for me,
5 if you would, how you understood the term
6 "unsatisfactory" in that question that you answered.

7 A. I understood the question to mean -- the
8 word "unsatisfactory" to mean those issues that are
9 eligible to receive a formal notice of violation.
10 That's -- that's my definition of an unsatisfactory.

11 Q. So even though you answered no to
12 Mr. Comley's question, there could still be areas in
13 which DNR has communicated to Folsom Ridge that there
14 are areas with room for improvement, shall we say?

15 A. I would agree with that, yes.

16 MR. MILLS: I have no further questions.
17 Thank you.

18 JUDGE STEARLEY: Thank you, Mr. Mills.
19 Recross, Staff, Ms. Heintz?

20 MS. HEINTZ: No questions, your Honor.

21 MS. HOLSTEAD: No questions, your Honor.

22 JUDGE STEARLEY: Any recross
23 examination, Mr. Comley, for Folsom Ridge?

24 RECROSS-EXAMINATION BY MR. COMLEY:

25 Q. Mr. Mills asked you questions about

1 adding pressure testing equipment to systems and --
2 so that there's a ready marker to gauge the pressure
3 on the systems. What size systems generally
4 configure pressure testing gauges and that sort of
5 thing within the systems, or does it vary by size?

6 A. I don't think -- I don't think it varies
7 by size; it varies by understanding of the importance
8 of pressure. It also -- it's also a function of the
9 operator's level of understanding of need to monitor
10 this, this type of information.

11 Q. Do you recommend when -- say, for
12 instance, customer base would get up to over 200,
13 pressure testing equipment should be on the system,
14 300, anything like that?

15 A. I would say -- I would say when they get
16 above 15 people -- 15 service connections or 25
17 people, they should routinely be checking their
18 pressure, and that's the entry point for
19 classification as a public water supply regulated by
20 DNR.

21 Q. But that can be done without the use of
22 a specific pressure gauge on particular portions of
23 the system?

24 A. Right.

25 Q. I think --

1 A. Usually most operators -- most good
2 operators will carry a pressure device that, you
3 know, it's a fitting that -- with a threaded fitting
4 on one end that they can quickly attach to a hose bib
5 for just that purpose, to monitor pressure throughout
6 the system.

7 Q. Were you suggesting something more
8 complicated or something more sophisticated than that
9 for purposes of Big Island's pressure testing?

10 A. I don't believe so.

11 Q. All right.

12 A. No. That would -- certainly -- at the
13 main production facility, i.e., the well house, I
14 would certainly -- I would highly recommend that a
15 pressure monitor, whether it's a recording monitor or
16 whether it's an instantaneous monitor, you know,
17 one-minute recording, should be installed for the
18 operator's information.

19 Q. All right.

20 A. Beyond that, the hand-held mount to the
21 hose bib is certainly sufficient to find problem
22 areas, low pressure areas that might come and go over
23 periods of time.

24 Q. All right. Thank you. There were
25 questions about the distance between wastewater

1 treatment facilities and a well.

2 A. Uh-huh.

3 Q. With respect to your answer, you
4 mentioned that considerations can be given to
5 distances of less than 300 feet for those facilities.
6 What kind of conditions, say, for instance, on the
7 well, would you expect to be in place if that
8 distance were less than the preferred 300 feet?

9 A. And there are situations that we
10 routinely deal with where 300 feet is not obtainable.
11 That's an ideal. For public water supply wells who
12 cannot achieve that 300-foot separation as a
13 protective radius, we recommend that they drive
14 casing deeper in the well shaft and that they provide
15 a grout seal clear to the bottom of the well, a grout
16 seal being a concrete seal between the hole in the
17 ground and the inner steel pipe that we call a casing
18 that goes down through the drill hole.

19 Q. And the purpose of that casing would be?

20 A. To seal the well from surface and
21 subsurface contaminants.

22 MR. COMLEY: That's all I have.

23 JUDGE STEARLEY: Thank you very much,
24 Mr. Comley. This concludes the rounds of recross
25 examination that I had laid out. Dare I ask,

1 Commissioner Appling, do you have any additional
2 questions for this witness?

3 COMMISSIONER APPLING: No, I believe
4 we've questioned him enough.

5 JUDGE STEARLEY: Very well.

6 Mr. MacEachen, I'd like to thank you for your prompt
7 and unexpected appearance here this morning --

8 THE WITNESS: My pleasure, Judge.

9 JUDGE STEARLEY: -- and for all your
10 testimony, and I am going to finally excuse you as a
11 witness today.

12 THE WITNESS: I thank you very much.

13 JUDGE STEARLEY: And we're gonna be
14 adjourning for lunch and I just had one procedural
15 matter I want to bring up. Before you-all go, just
16 to contemplate, we have three witnesses remaining and
17 we had brought up earlier in the proceeding the issue
18 about closing arguments versus briefs.

19 And I believe the leaning was going
20 toward briefing since we have the legal issue of
21 jurisdiction before -- Mr. Comley, I believe you
22 indicated that your client may be -- you had asked
23 for sort of an expedited ruling, that may be willing
24 to change the time frame in which you expect the
25 Commission order so we may accommodate a briefing

1 schedule?

2 MR. COMLEY: Your Honor, Ms. Holstead, I
3 think, can confirm this: The parties to the transfer
4 agreement are prepared to change the date of closing
5 to accommodate a adequate briefing schedule in this
6 case satisfactory to review the transcript, prepare a
7 brief and have it in time for the Commission to
8 deliberate and make an order. I think the
9 postponement would be until June 30th.

10 MS. HOLSTEAD: Your Honor, we would
11 agree with that. The 393 parties have not yet signed
12 the transfer agreement pending the outcome of this
13 proceeding, so we can renegotiate the change of that
14 date.

15 JUDGE STEARLEY: Okay. Very good. And
16 I may also ask for proposed Findings of Fact and
17 Conclusions of Law and I would like -- I know the
18 pro se complainants are not going to have particular
19 expertise with brief preparation, so I would like to
20 offer them the option of providing closing statements
21 or for them and all parties to provide closing
22 statements, and if complainants wanted to submit a
23 joint -- make a stab at a joint brief, you're
24 certainly welcome to do both options. And I wanted
25 to run that by the parties to see if there was any

1 opposition to that.

2 MS. HOLSTEAD: Your Honor, I believe
3 that would be a very good solution, to allow the
4 complainants to have a closing argument, yes.

5 JUDGE STEARLEY: Okay. And I -- I
6 believe I will allow them the opportunity also and
7 jointly to file a brief if they so desire. And with
8 that in mind, why don't we all take a lunch break and
9 we'll come back and resume at approximately 3:15.

10 (THE LUNCH RECESS WAS TAKEN.)

11 JUDGE STEARLEY: All right. We are back
12 on the record and we are going to pick up with the
13 offering of some documentary evidence with
14 Mr. Comley.

15 MR. COMLEY: Thank you, Judge.
16 Yesterday afternoon the court reporter very
17 generously marked for identification a series of
18 exhibits marked Exhibit 77 through Exhibit 94. These
19 were exhibits that were initially identified by Sue
20 Spurlock, the custodian of records for the Department
21 of Natural Resources.

22 At this time I'd like to let the
23 Commission know the reason for this is to give some
24 chronicle of the file in DNR's possession. The --
25 and what I'd like to do is go ahead with each exhibit

1 and explain why it's being offered. And also there
2 is a few exhibits -- in advance of visiting with the
3 court today, I visited with parties about -- and to
4 explain certain offerings about them.

5 The first exhibit marked 77 is a letter
6 from Keith Forck to James Jackson regarding a check
7 for \$500 in connection with the application for --
8 application for deconstruction or operation permit
9 facilities, and I would offer that into evidence with
10 one exception.

11 On the back of the front page of this
12 exhibit is a memorandum that is not clear who it is
13 addressed to. I am not making an offer of that nor
14 am I making an offer of the brochure that follows;
15 however, it was identified and validated by the
16 witness and I have brought this subject to the
17 attention of the parties. My offer would be limited
18 strictly to the first page of this exhibit.

19 JUDGE STEARLEY: All right. Are there
20 any objections to the admission of Exhibit 77 of
21 which we will only consider the first page?

22 (NO RESPONSE.)

23 JUDGE STEARLEY: Hearing none, it shall
24 be received and admitted into evidence.

25 (EXHIBIT NO. 77 WAS RECEIVED INTO

1 EVIDENCE AND MADE A PART OF THE RECORD.)

2 MR. COMLEY: Exhibit 78 is a series of
3 documents, and I want to explain to the Commission
4 that in looking at these documents last night, there
5 was a copy of Exhibit 59 which had been previously
6 marked and received by the Commission. I've advised
7 the parties that I took the liberty of removing this
8 document from the entire exhibit so that there would
9 not be any confusion in the record of a double
10 exhibit.

11 That being said, in connection with my
12 offer of Exhibit 78 and its contents, I would propose
13 that we make an addition to Exhibit 59. The
14 stipulation would be that Exhibit 59 was received by
15 the Public Drinking Water Program of DNR on May 26th,
16 1999.

17 JUDGE STEARLEY: Okay. Are there any
18 objections to receiving this evidence or to the
19 amendment to Exhibit 59?

20 MR. MILLS: I have no objection.

21 JUDGE STEARLEY: All right. Hearing
22 none, it shall be received and admitted into
23 evidence.

24 (EXHIBIT NO. 78 AND AMENDMENT TO EXHIBIT
25 NO. 59 WERE RECEIVED INTO EVIDENCE AND MADE A PART OF

1 THE RECORD.)

2 MR. COMLEY: Exhibit 79 is a letter from
3 Keith Forck to James Jackson regarding an application
4 for sewer line extension. It's dated January 24th,
5 2000, and I move that it be admitted into the record.

6 JUDGE STEARLEY: Any objections to
7 Exhibit 79?

8 (NO RESPONSE.)

9 JUDGE STEARLEY: Hearing none, it shall
10 be received and admitted into evidence.

11 (EXHIBIT NO. 79 WAS RECEIVED INTO
12 EVIDENCE AND MADE A PART OF THE RECORD.)

13 MR. COMLEY: Exhibit No. 80 is a letter
14 to Big Island Homeowners Association and David Lees
15 regarding a report -- an engineering report, plans
16 and specifications for a water line extension on Big
17 Island. I would move that into the record.

18 JUDGE STEARLEY: Any objections to
19 Exhibit 80?

20 (NO RESPONSE.)

21 MR. COMLEY: I'd also note that there is
22 another letter attached from Mr. Summerford. It's
23 kind of a two-letter exhibit -- three-letter exhibit,
24 and make the same offer.

25 JUDGE STEARLEY: Hearing no objections,

1 it shall be admitted and received into evidence.

2 (EXHIBIT NO. 80 WAS RECEIVED INTO
3 EVIDENCE AND MADE A PART OF THE RECORD.)

4 MR. COMLEY: Exhibit 81 are two copies
5 of the revised as-built drawings prepared by
6 Mr. Krehbiel. I move Exhibit 81 into evidence.

7 JUDGE STEARLEY: Any objections?

8 (NO RESPONSE.)

9 JUDGE STEARLEY: Hearing none, it shall
10 be received and admitted into evidence.

11 (EXHIBIT NO. 81 WAS RECEIVED INTO
12 EVIDENCE AND MADE A PART OF THE RECORD.)

13 MR. COMLEY: 82 is a report of
14 inspection as part of an application for construction
15 permit in connection with the Big Island subdivision.
16 Also there's a letter dated August 29th, 2005, to
17 Mr. Golden from Breck Summerford. We would move
18 admission of Exhibit 82.

19 JUDGE STEARLEY: Any objections to the
20 admission of Exhibit 82?

21 (NO RESPONSE.)

22 JUDGE STEARLEY: Hearing none, it shall
23 be received and admitted into evidence.

24 (EXHIBIT NO. 82 WAS RECEIVED INTO
25 EVIDENCE AND MADE A PART OF THE RECORD.)

1 MR. COMLEY: Exhibit 83 is a Form B
2 application for construction or operating permit for
3 facilities which receive basically domestic waste. I
4 would move admission of Exhibit 83.

5 JUDGE STEARLEY: Any objections to
6 Exhibit 83?

7 (NO RESPONSE.)

8 JUDGE STEARLEY: Hearing none, it shall
9 be received and admitted into evidence.

10 (EXHIBIT NO. 83 WAS RECEIVED INTO
11 EVIDENCE AND MADE A PART OF THE RECORD.)

12 MR. COMLEY: Exhibit 84 is a letter from
13 Big Island Homeowners Association to David Lees
14 respecting a submittal for a construction permit for
15 Big Island. It also contains a letter dated
16 February 25th, 2000, issuing the operating permit.
17 I'd move for the admission of Exhibit 84.

18 JUDGE STEARLEY: Okay. Did you say a
19 letter from Big Island or -- Department of Natural
20 Resources is what I have on here. Maybe I misheard.

21 MR. COMLEY: There are two letters, both
22 of whom are from the department to Big Island.

23 JUDGE STEARLEY: Okay.

24 MR. COMLEY: I think the final page of
25 the exhibit is a letter from David Lees to the

1 department.

2 JUDGE STEARLEY: Okay. Very good. Any
3 objections to the admission of Exhibit 84?

4 (NO RESPONSE.)

5 JUDGE STEARLEY: Hearing none, it shall
6 be received and admitted into evidence.

7 (EXHIBIT NO. 84 WAS RECEIVED INTO
8 EVIDENCE AND MADE A PART OF THE RECORD.)

9 MR. COMLEY: Exhibit 85 is a
10 construction permit for Big Island Homeowners
11 Association respecting construction of wastewater
12 facilities. On the back of that page I think is the
13 cover letter for that permit. I would move for the
14 admission of Exhibit 85.

15 JUDGE STEARLEY: Any objections to
16 Exhibit 85?

17 (NO RESPONSE.)

18 JUDGE STEARLEY: Hearing none, it shall
19 be received and admitted into evidence.

20 (EXHIBIT NO. 85 WAS RECEIVED INTO
21 EVIDENCE AND MADE A PART OF THE RECORD.)

22 MR. COMLEY: I have a note that that may
23 have been admitted already. I'm not clear on that.
24 But I wanted to readmit it -- reoffer it anyway.

25 JUDGE STEARLEY: I'm not sure either at

1 this time. We'll go ahead and admit it. If it is
2 duplicative, I'm sure we'll all discover it as we
3 review it later.

4 MR. COMLEY: Exhibit 86 is a letter from
5 the Department of Natural Resources dated January 5,
6 1999, to the Big Island Homeowners Association
7 regarding the application for wastewater works. I
8 would move the admission of Exhibit 86.

9 JUDGE STEARLEY: Any objections to
10 Exhibit 86?

11 (NO RESPONSE.)

12 JUDGE STEARLEY: Hearing none, it shall
13 be received and admitted into evidence.

14 (EXHIBIT NO. 86 WAS RECEIVED INTO
15 EVIDENCE AND MADE A PART OF THE RECORD.)

16 MR. COMLEY: Exhibit 85 is a
17 memorandum -- excuse me, did I say -- what did I say?

18 JUDGE STEARLEY: I believe we're up to
19 87.

20 MR. COMLEY: Exhibit 85 (sic) is dated
21 November 5, 1998. It is a memo to Keith Forck from
22 the permit section in DNR respecting the comment
23 period of the permit pending concerning Big Island,
24 and I would move for the admission of Exhibit 87.

25 JUDGE STEARLEY: Any objections to the

1 admission of Exhibit 87? It's okay. We're allowed
2 to misspeak at this time of day, especially after
3 this morning.

4 (NO OBJECTIONS TO EXHIBIT NO. 87 BUT NOT
5 ORALLY ADMITTED BY JUDGE STEARLEY.)

6 MR. COMLEY: Exhibit 88 is a letter
7 dated November 10th, 1998, addressed to Big Island
8 Homeowners. It bears a signature of David Lees. I'm
9 offering this. It is also connected to a letter
10 dated 11/9/98 from Keith Forck to Bowden Campbell
11 from Lake Professional Engineering Services
12 concerning wastewater questions. The letter from
13 Mr. Lees is offered for the purpose of showing that
14 this did arrive at DNR, and I would move for the
15 admission of Exhibit 88.

16 JUDGE STEARLEY: Any objections to
17 Exhibit 88?

18 (NO RESPONSE.)

19 MR. COMLEY: Exhibit 89 --

20 JUDGE STEARLEY: I'm sorry. Hearing
21 none, it will be received and admitted into evidence.

22 (EXHIBIT NO. 88 WAS RECEIVED INTO
23 EVIDENCE AND MADE A PART OF THE RECORD.)

24 MR. COMLEY: Exhibit 89 is a letter
25 dated January 5th, 1999, from Robert Hentges to Big

1 Island Homeowners Association respecting an
2 application for wastewater works and a construction
3 permit which is enclosed. I would move for the
4 admission of Exhibit No. 89, and I think I got that
5 number right.

6 JUDGE STEARLEY: Any objections to
7 Exhibit 89?

8 (NO RESPONSE.)

9 JUDGE STEARLEY: Hearing none, it shall
10 be received and admitted into evidence.

11 (EXHIBIT NO. 89 WAS RECEIVED INTO
12 EVIDENCE AND MADE A PART OF THE RECORD.)

13 MR. COMLEY: Exhibit 90 is the Missouri
14 State Operating Permit issued by the Missouri
15 Department of Natural Resources to Big Island
16 Homeowners Association, Inc. I would move for the
17 admission of Exhibit No. 90.

18 JUDGE STEARLEY: Okay. Any objections
19 to Exhibit 90?

20 (NO RESPONSE.)

21 JUDGE STEARLEY: Hearing none, it shall
22 be received and admitted into evidence.

23 (EXHIBIT NO. 90 WAS RECEIVED INTO
24 EVIDENCE AND MADE A PART OF THE RECORD.)

25 MR. COMLEY: Exhibit No. 91 is a letter

1 to Charles McElyea from Kevin Mohammadi, chief of the
2 Compliance and Enforcement Section, enclosing the
3 settlement agreement as signed. And that's the
4 settlement agreement that's been referred to in this
5 case. I would be -- I would move for the admission
6 of Exhibit 91.

7 JUDGE STEARLEY: Any objections to the
8 admission of Exhibit 91?

9 (NO RESPONSE.)

10 JUDGE STEARLEY: Hearing none, it shall
11 be received and admitted into evidence.

12 (EXHIBIT NO. 91 WAS RECEIVED INTO
13 EVIDENCE AND MADE A PART OF THE RECORD.)

14 MR. COMLEY: Exhibit 92 is a memorandum
15 from Elena Seon to Joseph P. Bindbeutel -- from --
16 yes, from -- to Elena Seon from Joseph Bindbeutel
17 concerning the settlement agreement. I would move
18 for the admission of Exhibit 92.

19 JUDGE STEARLEY: Any objections to
20 Exhibit 92?

21 (NO RESPONSE.)

22 JUDGE STEARLEY: Hearing none, it shall
23 be admitted and received into evidence.

24 (EXHIBIT NO. 92 WAS RECEIVED INTO
25 EVIDENCE AND MADE A PART OF THE RECORD.)

1 MR. COMLEY: Exhibit 93 is a report of
2 final inspection -- a cover letter concerning the
3 report of final inspection addressed to Reggie
4 Golden. It's dated September 29th, 2005, signed by
5 Clinton Finn for Cynthia Davis. I would move for the
6 admission of Exhibit 93.

7 JUDGE STEARLEY: Any objections to
8 Exhibit 93?

9 (NO RESPONSE.)

10 JUDGE STEARLEY: Hearing none, it shall
11 be received and admitted into evidence.

12 (EXHIBIT NO. 93 WAS RECEIVED INTO
13 EVIDENCE AND MADE A PART OF THE RECORD.)

14 MR. COMLEY: Exhibit 94 is a letter
15 dated February 15th, 2006, from the Department of
16 Natural Resources to Reggie Golden of Big Island
17 subdivision regarding a final inspection report for a
18 water supply extension signed by Clinton Finn for
19 Cynthia Davis. I would move the admission of
20 Exhibit 94.

21 JUDGE STEARLEY: Any objections to
22 Exhibit 94?

23 (NO RESPONSE.)

24 JUDGE STEARLEY: Hearing none, it shall
25 be received and admitted into evidence.

1 (EXHIBIT NO. 94 WAS RECEIVED INTO
2 EVIDENCE AND MADE A PART OF THE RECORD.)

3 JUDGE STEARLEY: And I believe that next
4 we are going to take your readings from the
5 deposition; is that correct, Mr. Comley?

6 MR. COMLEY: Yes, your Honor. I'd like
7 to do that now. Your Honor, the deposition of DNR
8 was taken in this matter on January 30th and again on
9 Tuesday of this week. One of the witnesses
10 designated by the department was Mr. Clinton Finn.
11 He has been signatory on several exhibits, and I
12 would like to read from the deposition taken on those
13 dates pertaining to his testimony at this time.

14 JUDGE STEARLEY: You may proceed. Were
15 you going to have some assistance with the reading of
16 the deposition?

17 MR. COMLEY: Well, I was gonna try to
18 capitalize on the talents of Mr. Mills.

19 MR. MILLS: I would be happy to help.

20 JUDGE STEARLEY: Thank you for offering
21 your talents, Mr. Mills.

22 MR. MILLS: For the record, when we
23 talked about the depositions earlier, I indicated
24 that I might object. My main objection was to
25 reading in portions of Mr. MacEachen's deposition

1 when Mr. MacEachen was planning to be a witness. I'm
2 not going to object to the reading -- well, I'm not
3 going to object generally to the reading of the
4 deposition of Mr. Finn until -- until I hear exactly
5 what's in there. I may have objections to particular
6 passages, but I don't have any general objections to
7 this procedure.

8 JUDGE STEARLEY: All right. We will
9 proceed, then, and if there are individual
10 objections, the parties can make them known to me.

11 MR. COMLEY: With respect to the
12 deposition dated January 30th, 2007, I would like to
13 start at page 5, lines 15 through 25.

14 JUDGE STEARLEY: Do the other parties
15 have copies of that deposition, Mr. Comley?

16 MR. COMLEY: I do not know.

17 JUDGE STEARLEY: All right. Well, they
18 can listen and as you read the question, they can
19 lodge any objections that they might wish to that
20 question prior to you reading the answer, Mr. Mills.

21 MR. COMLEY: Starting with line 15 on
22 page 5.

23 "BY MR. COMLEY:

24 Q. "Mr. Finn, I know that we know each
25 other, but would you mind giving the full name for

1 the court reporter, please?

2 A. "My name is Clinton Jason Finn.

3 Q. "Where do you live?

4 A. "I live in Ozark, Missouri.

5 Q. "How far is that from here?

6 A. "Time-wise about two hours and 45

7 minutes.

8 Q. "So it's well over, what, 150, 160

9 miles?

10 A. "Yes.

11 Q. "What county is that in?

12 A. "That is in Christian County.

13 Q. "You've been sitting here very patiently

14 in Mr. MacEachen's deposition but I have some

15 background questions for you. Tell me, where did you

16 go to high school?

17 A. "Jefferson City High School.

18 Q. "When did you graduate?

19 A. "1989.

20 Q. "After you graduated as a Jay, where did

21 you go?

22 A. "I went to Lincoln University for two

23 years. I went to University of Missouri-Rolla for

24 one semester and finished my degree at University of

25 Missouri in Columbia where I graduated with a

1 bachelor of science in civil engineering in 1994.

2 Q. "After your graduation with that degree,
3 did you attend any classes in post graduate studies?

4 A. "No, I did not.

5 Q. "At any time since then have you
6 attended any post graduate studies?

7 A. "No, I have not."

8 MR. COMLEY: The next -- I went over to
9 page 6, lines 1 through 21 for the sake of the
10 Commission. The next section would be on page 6,
11 lines 1 through 21 and -- I've already done that,
12 excuse me. Page 7, lines 9 through 25 and continuing
13 through page 8, lines 20 through 25.

14 JUDGE STEARLEY: All right. Please
15 proceed.

16 "BY MR. COMLEY:

17 Q. "What was your first position with the
18 Department of Natural Resources?

19 A. "Environmental engineer.

20 Q. "What were your duties as an
21 environmental engineer?

22 A. "At that time wastewater engineering
23 reviews and inspections.

24 Q. "Out of what office?

25 A. "The southwest regional office in

1 Springfield, Missouri.

2 Q. "Springfield?

3 A. Yes.

4 Q. "What is your position now with the

5 department?

6 A. "I am still an environmental --

7 environmental engineer and I'm an environmental

8 engineer III. I am a supervisor. I am the unit

9 chief for the drinking water engineering and

10 technical assistance unit.

11 Q. "You now have both wastewater and

12 drinking water duties?

13 A. "No. At this time I'm only drinking

14 water engineering.

15 Q. "Drinking water?

16 A. "Yes, I have worked both over the

17 years."

18 MR. COMLEY: The next section would be

19 line 20 on page 8 and going through line 25.

20 "BY MR. COMLEY:

21 Q. "Do you know where Big Island is?

22 A. "Yes, I do.

23 Q. "Have you inspected the Big Island

24 wastewater system and the community drinking water

25 system?

1 A. "I have not inspected the overall
2 wastewater system or the overall drinking water
3 system. I have inspected water lines and wastewater
4 lines.

5 Q. "Have you -- are you knowledgeable about
6 inspections of those facilities?

7 A. "Yes."

8 MR. COMLEY: Then we need to turn to the
9 deposition taken on February 26th, lines 54 --
10 page 54, lines 10 through 20. And I'm gonna start on
11 line 10 with the first -- with the second complete
12 sentence.

13 "BY MR. COMLEY:

14 Q. "Do you know when the construction
15 permit or the construction -- the request for a
16 construction permit, application for a construction
17 permit under the settlement agreement was filed with
18 the department?

19 A. "Not off the top of my head. I would
20 have to look into the files to -- to find that.

21 Q. "Would you know when the construction
22 permit was issued?

23 A. "Again, I would have to look -- look for
24 that. It would not be real difficult to find."

25 MR. COMLEY: Page 58, lines 5 through

1 23. And I think that's where you start on line 5.

2 It's a part of his answer.

3 MR. MILLS: Okay.

4 A. "Mr. Comley, can I respond to an earlier
5 question?

6 Q. "Certainly.

7 A. "You asked about the date that the
8 construction permit was issued for the water line
9 relocation project.

10 Q. "Yes.

11 A. "I have found that on my computer. The
12 database for permit tracking, it was issued -- it was
13 issued 10/21/04.

14 Q. "The permit was issued when" -- excuse
15 me. The permit was issued then?

16 A. "Yes.

17 Q. "Do you remember when the
18 construction -- the application for the construction
19 permit was filed? Is that in your computer database?

20 A. "It shows that DNR received that
21 application on 5/12/04.

22 Q. "So what I'm looking at is it took about
23 five months for the construction permit to be issued?

24 A. "Yes."

25 MR. COMLEY: Page 6 -- let's see.

1 Page 59, lines 7 through 13, and I'm gonna start --
2 it's kind of in the middle of a question.

3 "BY MR. COMLEY:

4 Q. "With respect to the settlement
5 agreement, has the water line replacement which was
6 in the terms and conditions of that settlement
7 agreement, then inspected on a final basis by your
8 department?

9 A. "Yes, it has.

10 Q. "Is Exhibit 77 the report of that
11 inspection?

12 A. "Yes, it is."

13 MR. COMLEY: And for the record,
14 Exhibit 77 of the deposition would conform to
15 Exhibit 93 that's been admitted into evidence. And
16 if you need confirmation of that, I will get that
17 exhibit for the Commission and the parties. I can do
18 that.

19 JUDGE STEARLEY: All right. Thank you,
20 Mr. Comley.

21 MR. COMLEY: Page 60, lines 7 -- excuse
22 me, lines 6 through 10.

23 "BY MR. COMLEY:

24 Q. "Let me affirm -- let me confirm with
25 you that your final inspection report would confirm

3 A. "Yes, it has."

6 JUDGE STEARLEY: All right. Thank you
7 very much, Mr. Comley. Thank you for your help,
8 Mr. Mills.

10 JUDGE STEARLEY: I believe at this time
11 we're ready for Mr. Snyder; is that correct,
12 Mr. Comley? Or is this -- I guess it's
13 Ms. Holstead's witness.

15 MR. COMLEY: In the meantime, I am going
16 to hand out the Exhibit 77, Mr. Clinton Finn's
17 deposition. I'm doing it for reference. I'm not
18 going to have it marked as an exhibit because it's
19 just referred to in the deposition exhibits, but
20 it does tie it up with Exhibit 93.

22 (The witness was sworn.)

25 (EXHIBIT NOS. 98 THROUGH 101 WERE MARKED

1 FOR IDENTIFICATION BY THE COURT REPORTER.)

2 DIRECT EXAMINATION BY MS. HOLSTEAD:

3 Q. Mr. Snyder, would you please state your
4 name for the record?

5 A. Gail Snyder.

6 Q. And how is your first name spelled?

7 A. G-a-i-l.

8 Q. And last name?

9 A. S-n-y-d-e-r.

10 Q. And are you the same Gail Snyder who
11 caused to be filed in the transfer case WO-2007-0277
12 certain direct testimony, additional direct testimony
13 and rebuttal testimony?

14 A. That's correct.

15 Q. And is that testimony identified for the
16 court today as Exhibits No. 98, 99 and 100?

17 A. Yes.

18 Q. Do you need to make any changes with
19 respect to your testimony?

20 A. Yes, I do, on the rebuttal.

21 Q. What page would that be?

22 A. That would be page -- I believe it
23 was -- I'm sorry. I ...

24 JUDGE STEARLEY: Take the time you need
25 to find your changes, Mr. Snyder.

1 THE WITNESS: I'm sorry. It was not the
2 rebuttal, it was the direct testimony.

3 BY MS. HOLSTEAD:

4 Q. The direct or the additional direct?

5 A. It was the supplemental direct.

6 Q. The additional direct which is
7 identified as Exhibit No. 99?

8 A. That's on page 4.

9 Q. Okay.

10 A. I misquoted that as -- I said 55 and it
11 was 50 on line 8. And I believe it was 82 percent
12 instead of 90 percent on line 8 also. And then on
13 line 13 it was also 82 percent and not 90 percent.

14 Q. Mr. Snyder, if I asked you the same
15 questions today that appear in your testimony, would
16 your answers be the same as currently appear as
17 corrected?

18 A. Yes.

19 Q. And are your answers true and correct to
20 the best of your information, knowledge and belief?

21 A. Yes, they are.

22 Q. And Mr. Snyder, in your testimony do you
23 reference the bylaws of the 393 corporations?

24 A. Yes, I do.

25 Q. And have those bylaws been identified by

1 the court today as Exhibit No. 101?

2 A. That's correct.

3 MS. HOLSTEAD: Your Honor, I would ask
4 for the admission of this testimony and the bylaws,
5 Exhibits 98 through 101 at this time.

6 JUDGE STEARLEY: Okay. Beginning with
7 Exhibit 98, are there any objections to the admission
8 of Exhibit 98?

9 (NO RESPONSE.)

10 JUDGE STEARLEY: Hearing none, it shall
11 be received and admitted into evidence.

12 (EXHIBIT NO. 98 WAS RECEIVED INTO
13 EVIDENCE AND MADE A PART OF THE RECORD.)

14 JUDGE STEARLEY: Exhibit 99?

15 (NO RESPONSE.)

16 JUDGE STEARLEY: Hearing none, it shall
17 be received and admitted.

18 (EXHIBIT NO. 99 WAS RECEIVED INTO
19 EVIDENCE AND MADE A PART OF THE RECORD.)

20 JUDGE STEARLEY: Exhibit 100?

21 (NO RESPONSE.)

22 JUDGE STEARLEY: Hearing none, it shall
23 be received and admitted.

24 (EXHIBIT NO. 100 WAS RECEIVED INTO
25 EVIDENCE AND MADE A PART OF THE RECORD.)

1 JUDGE STEARLEY: And Exhibit 101?

2 (NO RESPONSE.)

3 JUDGE STEARLEY: Hearing none, it shall
4 be received and admitted into evidence.

5 (EXHIBIT NO. 101 WAS RECEIVED INTO
6 EVIDENCE AND MADE A PART OF THE RECORD.)

7 MS. HOLSTEAD: Your Honor, we would
8 tender the witness for cross at this time.

9 JUDGE STEARLEY: Very well. And we will
10 begin cross-examination with Staff, Ms. Heintz?

11 MS. HEINTZ: I have no questions, thank
12 you.

13 JUDGE STEARLEY: Office of Public
14 Counsel, Mr. Mills?

15 MR. MILLS: No questions, thank you.

16 JUDGE STEARLEY: Go to the complainants
17 beginning with Ms. Orlor, do you have some
18 cross-examination for this witness?

19 MS. ORLER: Yes, your Honor, just a
20 couple.

21 CROSS-EXAMINATION BY MS. ORLER:

22 Q. Mr. Snyder, if you could please turn to
23 your surrebuttal testimony, page 16, please?

24 A. I don't have a surrebuttal.

25 Q. I'm sorry. This will be rebuttal

1 testimony, page 5. I apologize.

2 A. (Witness complied.) Okay.

3 Q. You're making reference to meetings of
4 the 393 companies. Were these meetings open to the
5 public?

6 A. No, they were not.

7 Q. They were not open to the public. Have
8 there been any meetings regarding the 393 companies
9 that have been open to the public?

10 A. Not at this time. We didn't advertise
11 it as such.

12 Q. Okay. Was there a reason for that?

13 A. No.

14 Q. Okay. So the 393s are not
15 not-for-profit companies but yet you've had no public
16 meetings regarding these open to the residents?

17 A. We -- no, we have not. We have not been
18 at that --

19 JUDGE STEARLEY: Excuse me, Mr. Snyder.
20 Could you please speak a little bit more directly
21 into your microphone?

22 THE WITNESS: Yes, I'm sorry.

23 JUDGE STEARLEY: That will help us all
24 hear better and make it easier for our court
25 reporter.

1 THE WITNESS: No, we have not. We have
2 not reached that point at this time.

3 BY MS. ORLER:

4 Q. All right. So in your testimony when
5 you make reference to the fact that Ms. Orler was not
6 a part of those meetings, it was not because I had
7 declined an invitation to attend those meetings; it
8 was just simply because that they were not open to
9 the public?

10 A. That's correct.

11 Q. Thank you. Now, on page 6 of that
12 testimony, line 6, you make the statement that,
13 "Ms. Orler is spearheading the PSC complaints."
14 do you have documentation to support that
15 statement?

16 A. No, I do not.

17 Q. And what do you mean by that statement?

18 A. Well, it's pretty obvious. You're right
19 here today, you've been spearheading the thing all
20 the way through.

21 Q. What do you mean by "spearheading"?

22 A. Well, you're the one that's taken the
23 lead in it.

24 Q. And what do you mean by "taking the
25 lead"?

1 A. Your complainants, all your complaints
2 and the intervenors.

3 Q. Can you be more specific for the
4 Commission when you say "taking the lead"?

5 A. Well, you're the one that's filed most
6 of the complaints, so I would say that you're taking
7 the lead and spearheading that complaint.

8 MS. ORLER: I think I would like to
9 clarify for the Commission that there were actually
10 nine individual formal complaints --

11 JUDGE STEARLEY: Ms. Orler --

12 MS. HEINTZ: Objection, your Honor.

13 JUDGE STEARLEY: Yes. What you're
14 offering is testimony now. You may only ask
15 questions.

16 MS. ORLER: Okay.

17 BY MS. ORLER:

18 Q. Are you aware that there were nine
19 individual formal complaints filed with the Public
20 Service Commission?

21 A. Yes.

22 Q. Okay. So were any one of those
23 complaints weighted more heavily than another
24 complaint?

25 A. I don't know how to answer that

1 question.

2 Q. Okay. Thank you. On -- on -- with
3 regards to the same testimony, you have made the
4 statement that you had difficulty in -- in locating
5 full-time residents who were willing to serve on the
6 board of the 393s; is that correct?

7 A. That was my statement, yes.

8 Q. Okay. Did you attend the public meeting
9 held in Camdenton on June the 6th of '05 and -- that
10 was held by the Public Service Commission there?

11 A. Yes, I did.

12 Q. And did you receive a handout at that
13 meeting that was supplied by complainants?

14 A. I don't recall.

15 Q. Did you receive any handouts at that
16 meeting, the public meeting?

17 A. I really don't recall.

18 Q. Have you been made aware of the fact
19 that complainants had made the statements with
20 regards to residents or a type of homeowners
21 association with the board to actually own, operate
22 and maintain the utility, the fact that because we --
23 because of this being a recreational location --

24 MS. HOLSTEAD: Objection, your Honor.

25 The question is compound and seems to be offering

1 testimony.

2 JUDGE STEARLEY: I will sustain the
3 objection. If you could please rephrase, make it a
4 more succinct question. If you need to break it down
5 into several questions, that's fine.

6 BY MS. ORLER:

7 Q. Have you been made aware or has the
8 statement been made to you by any of the complainants
9 that finding individuals to serve on a homeowners
10 board might be difficult?

11 A. I've heard that, yes.

12 Q. And from whom have you heard that?

13 A. From you.

14 Q. All right. You've also referenced in
15 your testimonies that I -- you've made reference to
16 the fact that I have indicated that 393 president,
17 Pam Holstead, is basically unfit to lead the 393
18 companies. Is Ms. Holstead present today?

19 A. Yes, she is.

20 Q. And can you, I guess, identify her to
21 the Commission, please?

22 A. Yes, I can.

23 Q. And how do we do that?

24 JUDGE STEARLEY: I think Ms. Holstead is
25 quite clearly identified to the Commission. She's

1 entered an appearance in this case as an attorney and
2 has just offered the witness for cross-examination.

3 MS. ORLER: Okay. I need to get some
4 documents, please.

5 JUDGE STEARLEY: By all means. Are
6 these documents that are already in evidence?

7 MS. ORLER: (Nodded head.)

8 JUDGE STEARLEY: Okay.

9 MS. ORLER: I'd like to have the
10 opportunity to present to Mr. Snyder Exhibits 37 and
11 39, please.

12 JUDGE STEARLEY: Okay. Let me -- can I
13 see -- have those been admitted and received into
14 evidence?

15 MS. HOLSTEAD: I show that they have
16 not, your Honor.

17 JUDGE STEARLEY: We're talking about,
18 you said 37 and 39?

19 MS. HOLSTEAD: I show 39 has.

20 JUDGE STEARLEY: I think we accepted a
21 clean copy, by my notations, of Exhibit 39; is that
22 correct?

23 MS. ORLER: Uh-huh.

24 JUDGE STEARLEY: Do you have a clean
25 copy with you to show this witness?

1 MS. ORLER: Yes, I do, uh-huh.

2 JUDGE STEARLEY: Okay. And the other
3 was Exhibit 37?

4 MS. ORLER: Correct, uh-huh.

5 JUDGE STEARLEY: And I do not believe
6 that was received into evidence. That was excluded.

7 MR. ORLER: All right.

8 JUDGE STEARLEY: So you may show him
9 Exhibit 39 unless you intend somehow to try another
10 attempt at authenticating Exhibit 37 with this
11 witness.

12 MS. ORLER: All right. Thank you.

13 JUDGE STEARLEY: And may I take a quick
14 look at those as you pass by here? Okay. Thank
15 you.

16 BY MS. ORLER:

17 Q. Would you please take a moment to read
18 through that, Mr. Snyder?

19 A. Yes.

20 MS. HOLSTEAD: Your Honor, I'd like to
21 clarify whether or not this is the first time
22 Mr. Snyder has ever seen this letter. It's not
23 addressed to him, it's not signed by him.

24 JUDGE STEARLEY: We can -- we can
25 clarify that.

1 THE WITNESS: Yes, your Honor, this is
2 the first time I've ever seen this letter.

3 JUDGE STEARLEY: All right. Very well.
4 Let us know when you've had an adequate time to
5 review it.

6 THE WITNESS: Okay.

7 BY MS. ORLER:

8 Q. Have you had sufficient time?

9 A. Oh, I think so.

10 Q. All right. Now, you have made the
11 statement in your testimony that 393 president Pam
12 Holstead is basically unfit to lead the 393 companies
13 and --

14 MS. HOLSTEAD: Objection, your Honor. I
15 believe that mischaracterizes his testimony.

16 JUDGE STEARLEY: I was gonna say, where
17 can you point to this in Mr. Snyder's testimony? And
18 to prevent any characterization of it when you find
19 the statement, you can preface your question by
20 reading that language verbatim.

21 MS. ORLER: Okay.

22 JUDGE STEARLEY: Or you can ask
23 Mr. Snyder if he did, in fact, make that statement
24 without characterizing it.

25 BY MS. ORLER:

1 Q. Okay. I'm referring specifically on
2 page 9, lines 26 through 35 of your rebuttal
3 testimony. Did you use that phraseology?

4 MS. HOLSTEAD: Objection, your Honor. I
5 believe she's referring to the question and not the
6 answer.

7 JUDGE STEARLEY: Okay. That is the
8 question that's posed, so that -- the answer of
9 Mr. Snyder follows that. If you'd like to read the
10 answer on line 29 to that question, I believe it
11 states, "Absolutely not."

12 BY MR. ORLER:

13 Q. Have you used this? Have you referenced
14 this, Mr. Snyder?

15 A. Have I referenced what?

16 MS. HOLSTEAD: Objection, your Honor.
17 What is "this"?

18 MS. ORLER: That --

19 JUDGE STEARLEY: Please clarify,
20 Ms. Orler.

21 MS. ORLER: Okay. I'm sorry.

22 BY MS. ORLER:

23 Q. Have you indicated that Ms. Orler has
24 made allegations that 393 president Ms. Pam Holstead
25 is basically unfit to lead the 393 companies?

1 A. That was my question there, yes.

2 Q. Okay. Now, in reference to the exhibit
3 which is Exhibit No. -- I believe 39 that you have in
4 front of you, could you please turn to the second
5 page and read the beginning para -- the top paragraph
6 beginning with the second sentence, please, starting
7 with "Her complaint"?

8 MS. HEINTZ: Your Honor, I would object
9 here. This document has already been received and
10 admitted into evidence. Mr. Snyder was not the
11 author. There's no reason for him to read portions
12 of this document into the record.

13 JUDGE STEARLEY: Ms. Orler, you may ask
14 questions regarding the document and regarding those
15 statements, but I don't believe we need a rendition
16 of -- or a reading of the document into the record.

17 MS. ORLER: Okay.

18 JUDGE STEARLEY: It is in evidence.

19 MS. ORLER: All right. Thank you.

20 BY MS. ORLER:

21 Q. With regards to the 393 companies,
22 Mr. Snyder, what type of a vote are the 393 companies
23 set up as, type of voting system?

24 A. I don't understand your question.

25 Q. How do the 393 companies vote?

1 A. How do they vote?

2 Q. Uh-huh.

3 A. You mean overall for everyone that's a
4 member or what are you asking?

5 Q. How does the vote take place within the
6 393 companies, among the members or customers?

7 A. One vote per customer.

8 Q. And is that the way you feel that the
9 organization should be set up?

10 A. Yes.

11 Q. Would it surprise you to learn that the
12 president of the 393 companies, Ms. Holstead, has
13 indicated under signature that developers should
14 follow --

15 MS. HOLSTEAD: Objection, your Honor.
16 Now she is testifying. She's referring back to the
17 Exhibit No. 39 and trying to reiterate the
18 information that's already provided in the exhibit.

19 JUDGE STEARLEY: Could you rephrase,
20 Ms. Orler?

21 BY MS. ORLER:

22 Q. Would it surprise you to learn that
23 Ms. Holstead has made several statements under
24 signature indicating that the developer should have
25 control of the utility by voting one lot per vote?

1 A. I believe that's on a home association
2 and the way it was set up -- has been set up in the
3 past. I don't believe that she's referring to a 393.

4 Q. Would it surprise you that the statement
5 has been made under signature with regards to a
6 developer maintaining control of the utility?

7 A. Would you repeat that?

8 Q. Yes. Would it surprise you to know that
9 Ms. Holstead has stated under signature that the
10 developer should have control of the water and sewer
11 utility?

12 A. I can't answer that with a yes or no.

13 Q. Would it be concerning to you that
14 Ms. Holstead as president of the 393 companies has
15 made that statement under signature?

16 A. No.

17 Q. Does it concern you that there may not
18 (sic) be any bias there towards the 393 companies and
19 the developer, Ms. Holstead having made that statement?

20 A. Can you rephrase that? I don't think --
21 I don't understand that question.

22 Q. Does it concern you that there may be a
23 bias between Ms. Holstead and her position as
24 president with the 393 companies, may have a bias
25 towards the developer?

1 A. None whatsoever.

2 Q. Can you assure us that that bias does
3 not exist?

4 A. No, I can't assure you of anything.

5 Q. Thank you. Now, you've also stated in
6 this same testimony that, "Obviously, Ms. Orlor does
7 not want a resolution which is not of her own
8 making." What do you mean by that statement?

9 JUDGE STEARLEY: Could you please direct
10 us to the --

11 MS. ORLER: Oh, I'm sorry.

12 JUDGE STEARLEY: -- page and line that
13 you're on, Ms. Orlor?

14 MS. ORLER: Just one moment.

15 MR. MILLS: It's Mr. Snyder's rebuttal
16 testimony, Exhibit 100, page 9, lines 34 and 35.

17 MS. ORLER: Thank you.

18 JUDGE STEARLEY: Thank you, Mr. Mills.

19 MR. MILLS: You're welcome.

20 JUDGE STEARLEY: I just want to be able
21 to be reading the exact statement myself. You may
22 proceed with your question, Ms. Orlor.

23 BY MS. ORLER:

24 Q. Again, can you tell me what you meant by
25 the statement that "Ms. Orlor does not want a

1 resolution which is not of her own making"?

2 A. Well, I guess what brought that
3 statement to a head for me was when we were in this
4 same building, the Office of Public Counsel asked you
5 several times if there was a vote taken --

6 MR. MILLS: Your Honor, I think we're
7 getting into testimony about what happened during a
8 settlement conference, and I would object to
9 discussion of that.

10 JUDGE STEARLEY: On the basis of
11 relevance, assuming --

12 MR. MILLS: On the basis of privilege.

13 JUDGE STEARLEY: And privilege, yes. I
14 would agree and I will sustain that objection.

15 BY MS. ORLER:

16 Q. So other than the single meeting that
17 has been objected to, you have no other support
18 reference for that statement, Mr. Snyder?

19 A. That's correct.

20 MS. ORLER: All right. That's all I
21 have.

22 JUDGE STEARLEY: Thank you, Ms. Orler.

23 MS. ORLER: Oh, one -- one other thing,
24 I'm sorry.

25 JUDGE STEARLEY: All right. Go ahead.

1 MS. ORLER: Exhibit No. 38. This again
2 is my copy. I don't have a clean copy to show
3 Mr. Snyder.

4 JUDGE STEARLEY: Okay.

5 MS. HEINTZ: Your Honor, excuse me. I
6 don't believe this has been admitted.

7 JUDGE STEARLEY: It has not been
8 admitted at this time. No, it has not.

9 MS. HEINTZ: So I have to wait until
10 Mr. Merciel can authenticate it; is that correct?

11 JUDGE STEARLEY: You can show the
12 document to Mr. Snyder.

13 MS. ORLER: Okay.

14 JUDGE STEARLEY: You could ask him some
15 limited questions that would be subject to any
16 reasonable objection from the parties --

17 MS. ORLER: All right.

18 JUDGE STEARLEY: -- but if you go to
19 offer it at this time, I don't believe it's been
20 authenticated or fully identified. So I mean, you
21 may show Mr. Snyder the document, ask him if he's
22 familiar with it and you can question him about the
23 document, but we'll see based upon your questions if
24 they're objectionable or not.

25 THE WITNESS: I haven't seen it.

1 BY MS. ORLER:

2 Q. Okay. Mr. Snyder, are you vice
3 president of the 393 companies?

4 A. That's correct.

5 Q. Has Ms. Holstead in conversation ever
6 shared with you the cost of utility -- the actual
7 cost for regulation of the utility as given to her by
8 Mr. Merciel?

9 A. I don't believe so.

10 Q. Do you have any idea of the cost of
11 regulation?

12 A. I think I've got a fair idea.

13 Q. And where did you get that information?

14 A. I think I read it somewhere, but I
15 didn't read it in that document.

16 Q. Okay. And can you tell me what that
17 idea is?

18 A. I think probably for sewer and water
19 it's somewhere around 10 percent.

20 Q. All right. Okay. But you did not get
21 that information --

22 A. No.

23 Q. -- from this document?

24 A. No, I didn't.

25 Q. Nor was it shared with you by

1 Ms. Holstead?

2 A. No.

3 MS. ORLER: All right. Thank you.

4 That's all I have.

5 JUDGE STEARLEY: Thank you, Ms. Orler.

6 Cross-examination from Mr. Pugh?

7 CROSS-EXAMINATION BY MR. PUGH:

8 Q. Mr. Snyder, were you at the meeting on
9 May something of 2005? We were interviewing Mr.
10 Pohl, Mr. Bob Pohl, attorney?

11 A. Was that the one at the bank --

12 Q. Yes, sir.

13 A. -- and we were all there? Yes --

14 Q. Yes, sir.

15 A. -- yes, I was.

16 Q. At that meeting -- well, what was the
17 reason for that meeting?

18 A. That was for -- trying to get together
19 to take over the ownership of the system. We thought
20 it would be good to get an independent attorney, one
21 that Folsom had not used.

22 Q. When we took the vote, how did the vote
23 go for that?

24 A. It went real good. It went -- it was
25 pretty unanimous.

1 Q. Unanimous, yes.

2 A. Yes.

3 Q. After -- after we left that the
4 meeting -- let me back up. When did -- when did
5 the -- what date did -- what upcoming day from that
6 time was the homeowners themselves supposed to --
7 supposed to take over the liability of the homeowners
8 association?

9 A. You know, I really don't recall. I -- I
10 could make a statement here but I'm not sure I'm
11 correct. I was thinking it might be September.

12 Q. September 1st maybe?

13 A. Yes, but I'm not --

14 Q. 2005?

15 A. -- sure if that's correct.

16 Q. May, June, July, August, September,
17 right?

18 A. (Nodded head.)

19 Q. Yes, sir. That is the way --

20 MS. HEINTZ: Your Honor, I think that's
21 testimony.

22 JUDGE STEARLEY: That's testimony and it
23 will be stricken.

24 MR. PUGH: Thank you. I'm sorry.

25 BY MR. PUGH:

1 Q. When you left that meeting, did you feel
2 like you would be getting a bill within a few days
3 for the hiring of Mr. Pohl?

4 A. No, I did not.

5 Q. Did you know that the complainants
6 during the next couple three months after that
7 meeting inquired with several people including
8 Mr. Hiley about why nothing had been done or why
9 nobody had asked for any money?

10 A. No, I had -- I did not know that.

11 Q. How long was it before the first
12 complainant turned in their complaint to the PSC
13 after that May meeting?

14 A. I have no idea.

15 Q. Would -- would you believe 103 days?

16 A. I would have no idea.

17 Q. Would you -- assuming I'm right and it
18 was 103 days, would you, from the attitude we all had
19 at that meeting, we were quite excited about --

20 MS. HEINTZ: Your Honor, this is
21 starting to sound like testimony again.

22 MR. PUGH: I'm sorry.

23 JUDGE STEARLEY: Please rephrase,
24 Mr. Pugh.

25 BY MR. PUGH:

1 Q. Would you say that at that meeting where
2 we had the unanimous vote, including myself, would
3 you say that the tenants there were pretty excited
4 about that meeting, about hiring Mr. Pohl?

5 JUDGE STEARLEY: Mr. Pugh, I don't mean
6 to interrupt here, but I'm a little confused as to
7 where you're going with this line of questioning. If
8 you could give me an idea as to the relevance of
9 where you're going with this, it would be
10 appreciated.

11 MR. PUGH: The relevance, sir, is -- is
12 that this group was very critical of the complainants
13 for -- in August, going ahead and applying to the PSC
14 with our -- with our complaints.

15 JUDGE STEARLEY: Your complaints are a
16 matter of record and before the Commission and, of
17 course, that is part of the reason we are here today.
18 I don't find this relevant or anything -- additional
19 information that we need for the record, so if you
20 could move on to a different subject, please, unless
21 there's another question associated with this that
22 will, you know, lead to some relevant testimony.

23 BY MR. PUGH:

24 Q. Are you aware -- are you aware that in
25 Ms. Orler's complaint to the PSC that she went out of

1 her way to keep from having this complaint go to the
2 homeowners themselves but just to the developers?

3 A. No, I'm not aware of that.

4 MR. PUGH: I think that's enough.

5 JUDGE STEARLEY: Okay.

6 MR. PUGH: Thank you.

7 JUDGE STEARLEY: Thank you, Mr. Pugh.

8 MR. PUGH: Thank you, Mr. Snyder.

9 JUDGE STEARLEY: Cross-examination,
10 Ms. Fortney?

11 MS. FORTNEY: No questions, your Honor.

12 JUDGE STEARLEY: And there are no
13 questions from the bench, and so we can dispense with
14 the recross and then move to redirect. Ms. Holstead?

15 MR. COMLEY: And I had no questions
16 either.

17 JUDGE STEARLEY: Oh, did I skip -- I'm
18 sorry, Mr. Comley, I did skip over you.

19 MR. COMLEY: I just wanted to confirm
20 that, and that's all right.

21 JUDGE STEARLEY: I appreciate that.
22 You're entitled to throw a pencil at me next time in
23 getting my attention.

24 REDIRECT EXAMINATION BY MS. HOLSTEAD:

25 Q. Mr. Snyder, Ms. Orlor brought out

1 information about obtaining residents to serve on the
2 board of directors for the 393. To your knowledge
3 has there been any difficulty in obtaining people to
4 sit on that board?

5 A. Only full-time residents. Other than
6 that there's no problem. We've even had volunteers.

7 Q. Why was there a preference for full-time
8 voluntary board members?

9 A. Well, we felt at that particular time
10 there would be a lot of meetings to get this 393
11 underway and it would be better if they were there on
12 a full-time basis so they wouldn't have to make so
13 many trips to the lake.

14 Q. Okay. But as far as obtaining board
15 members, it's been no problem and we -- and you just
16 indicated there are people that are willing to serve?

17 A. That's correct.

18 Q. Okay. If it became a problem somewhere
19 down the road that there were not enough people
20 volunteering to serve on the board, could the
21 membership at that time amend their bylaws to open it
22 up to additional people?

23 A. Yes, it -- yes, they certainly could.

24 Q. Mr. Snyder, Ms. Orlor showed you a
25 letter written by myself identified as Exhibit

1 No. 39. Do you still have a copy of that?

2 A. No, I do not.

3 Q. Okay. I'm gonna show it to you and ask
4 you what the date is on that?

5 A. May 17th, 2006.

6 Q. Mr. Snyder, in May of 2006, at that
7 point in time were efforts underway to organize the
8 393 companies?

9 A. No, they were not.

10 Q. And was a developer at that time
11 amenable to organizing -- you know, working with and
12 transferring the assets to a 393 --

13 A. No, they were -- they were not.

14 Q. Is it possible that the person who wrote
15 that letter, then, in May of 2000 -- 2006, May, could
16 have had a change of position later on?

17 A. That's very --

18 MR. MILLS: Object, calls for
19 speculation.

20 JUDGE STEARLEY: I'll sustain that
21 objection.

22 BY MS. HOLSTEAD:

23 Q. As a member of the board of directors,
24 if you're faced with a decision of making policy
25 based on what's best for the customers or what's best

1 for the developer, which would bear the greater
2 importance to you?

3 A. Well, my obligation, of course, would be
4 to the customers.

5 Q. And do you feel that sense of obligation
6 is shared by the other board members?

7 A. Most definitely so, yes.

8 Q. Ms. Orlor asked you if I had ever
9 discussed with you the cost of utility service on Big
10 Island under PSC regulation; is that correct?

11 A. That's correct.

12 Q. And have there been discussions about
13 the amount that would be possibly charged under PSC
14 regulation?

15 A. Yes, there has been discussions on that.

16 Q. In fact, has the board put out
17 information to the residents of Big Island that
18 included information about that?

19 A. That's correct.

20 Q. I'm going to hand you a brochure and ask
21 if you can identify this.

22 A. Okay.

23 Q. Do you recognize that brochure?

24 A. Yes, I do.

25 Q. Is it one that was put out by the 393

1 corporation?

2 A. That's correct.

3 MS. HOLSTEAD: On the -- I'm going to at
4 this time ask to have the brochure marked as an
5 exhibit.

6 JUDGE STEARLEY: Okay. It shall be
7 marked as Exhibit No. 102.

8 (EXHIBIT NO. 102 WAS MARKED FOR
9 IDENTIFICATION BY THE COURT REPORTER.)

10 JUDGE STEARLEY: Do all the parties have
11 a copy of this?

12 BY MS. HOLSTEAD:

13 Q. If I could direct you to the second page
14 or the inside cover page of that brochure, the
15 next-to-the-last question, does that question refer
16 to the board's understanding of how utility rates
17 could increase under PSC regulation?

18 A. That's correct.

19 MS. HOLSTEAD: That concludes my
20 redirect, your Honor.

21 JUDGE STEARLEY: All right.

22 MS. HOLSTEAD: Oh, I would ask that that
23 exhibit be admitted into evidence.

24 JUDGE STEARLEY: That's what I was gonna
25 ask you. Are there any objections to the admission

1 of Exhibit No. 102?

2 (NO RESPONSE.)

3 JUDGE STEARLEY: Hearing none, it shall
4 be received and admitted into evidence.

5 (EXHIBIT NO. 102 WAS RECEIVED INTO
6 EVIDENCE AND MADE A PART OF THE RECORD.)

7 JUDGE STEARLEY: Mr. Snyder, that
8 concludes your testimony. I'd like to thank you for
9 your patience today in waiting to provide your
10 testimony and for your testimony.

11 I will not fully excuse you as a
12 witness at this time, though, in case the
13 Commissioners would wish to call you back for some
14 additional questioning, but you may step down from
15 the stand.

16 THE WITNESS: Okay.

17 JUDGE STEARLEY: Ms. Holstead, I believe
18 you have another witness to call?

19 MS. HOLSTEAD: Mr. Phillip Hiley.

20 (EXHIBIT NO. 103 WAS MARKED FOR
21 IDENTIFICATION BY THE COURT REPORTER.)

22 (The witness was sworn.)

23 JUDGE STEARLEY: Ms. Holstead, you may
24 proceed.

25 DIRECT EXAMINATION BY MS. HOLSTEAD:

1 Q. Would you please state your full name
2 for the record?

3 A. Phillip Hiley.

4 Q. And are you the same Phillip Hiley who
5 caused to be filed in the transfer case certain
6 rebuttal testimony?

7 A. Yes, I am.

8 Q. And is that testimony presented to the
9 court here today and identified as Exhibit No. --

10 JUDGE STEARLEY: Has that been marked at
11 this time? I don't believe -- it should be Exhibit
12 No. 103, then, if I'm at the correct count.

13 BY MS. HOLSTEAD:

14 Q. That would be Exhibit No. 103,
15 Mr. Hiley; is that correct?

16 A. Yes.

17 Q. Do you need to make any changes today
18 with respect to that testimony?

19 A. No.

20 Q. If I asked you the same questions today,
21 would your answers be the same as what appear in that
22 testimony?

23 A. Yes.

24 Q. Are your answers true and correct to the
25 best of your information, knowledge and belief?

1 A. Yes.

2 MS. HOLSTEAD: Your Honor, we would
3 tender this witness for cross-examination.

4 JUDGE STEARLEY: Okay. Would you like
5 to offer an exhibit at this time?

6 MS. HOLSTEAD: Yes, your Honor, I would.

7 JUDGE STEARLEY: Are there any
8 objections to the admission of Exhibit 103?

9 (NO RESPONSE.)

10 JUDGE STEARLEY: Hearing none, it shall
11 be received and admitted into evidence.

12 (EXHIBIT NO. 103 WAS RECEIVED INTO
13 EVIDENCE AND MADE A PART OF THE RECORD.)

14 JUDGE STEARLEY: And we shall begin
15 cross-examination with Staff.

16 MS. HEINTZ: I have no questions, your
17 Honor, thank you.

18 JUDGE STEARLEY: Okay. The Office of
19 Public Counsel, Mr. Mills?

20 MR. MILLS: No questions.

21 JUDGE STEARLEY: Complainants, beginning
22 with Ms. Orler?

23 MS. ORLER: Yes, your Honor.

24 CROSS-EXAMINATION BY MS. ORLER:

25 Q. Mr. Hiley, on page 2 of your rebuttal

1 testimony beginning with line 20, you reference a
2 telephone call that Mr. Pugh made to you. Can you
3 tell me why he called you on January the -- excuse
4 me, on Sunday, January the 28th?

5 A. He wanted to know if I had an extra copy
6 of the bylaws.

7 Q. The bylaws for?

8 A. The bylaws for the 393.

9 Q. And that date was on Sunday, January the
10 28th, was it not?

11 A. Yes.

12 Q. Okay. Now, Mr. Pugh was requesting a
13 copy of the 393 bylaws for what purpose?

14 A. So that he could review them, I presume.

15 Q. Okay. So by that, I would understand
16 that Mr. Pugh did not have a copy of those bylaws?

17 A. He -- he -- the bylaws are long, and he
18 didn't want to make an extra copy and if I had an
19 extra one. They're long, they're expensive to
20 duplicate. And so he was wanting to know if I had an
21 extra copy and I said no, I didn't.

22 Q. Was there a reason why he was wanting
23 them that specific day?

24 A. I don't know.

25 Q. Were you aware that the vote to transfer

1 the assets of the utility to the 393 companies was
2 scheduled to be held on Monday, the 29th of January?

3 A. Yes, I'm aware of that.

4 Q. Okay. Now, having said that, were
5 copies of these bylaws made available to other
6 residents with the exception of Mr. Pugh?

7 A. No.

8 Q. And why not?

9 A. I think the main reason was that it was
10 just a very expensive process, and so these bylaws, a
11 copy of these bylaws were put on our website by one
12 of the attorneys here at PSC for people to view.

13 Q. And do you know who requested that?

14 A. I'm not sure. Maybe you.

15 Q. That is correct.

16 MS. HEINTZ: Excuse me. That's
17 testifying.

18 JUDGE STEARLEY: That's testifying and I
19 will strike those remarks.

20 BY MS. ORLER:

21 Q. Now, there was a vote to be held on
22 January the 29th with regards to the transfer of
23 assets from the current utility to the 393 companies.
24 Now, would you agree that the bylaws of the 393
25 companies are a very important document?

1 A. Yes.

2 Q. But not important enough to warrant the
3 expense to make those copies available to residents?

4 MR. COMLEY: I'm gonna object on the
5 grounds of argument -- that's an argumentative
6 question for the witness and I oppose the -- I object
7 to the question and the form of the question.

8 JUDGE STEARLEY: All right. You may
9 rephrase, Ms. Orlor.

10 BY MS. ORLER:

11 Q. Did you have requests from residents for
12 copies of the bylaws of the 393 companies?

13 A. Yes.

14 Q. And what was your response?

15 A. I think that you should ask that
16 question of the board members of the 393. I was
17 actually not a part of it.

18 Q. Can you tell me what your affiliation is
19 with the 393 companies?

20 A. I'm an advocate of the 393.

21 Q. All right. And why is that?

22 A. I think she's asking for testimony.

23 Q. I think that's what you're giving.

24 JUDGE STEARLEY: That's correct in the
25 sense that she can ask for your testimony, Mr. Hiley.

1 THE WITNESS: Okay.

2 JUDGE STEARLEY: She just can't testify
3 while she's asking a question.

4 THE WITNESS: I just think it's a better
5 way to go.

6 BY MS. ORLER:

7 Q. And why?

8 A. When the -- because -- primarily because
9 the system is actually run by the people who use the
10 system for the first point, and it can be done at a
11 much less expensive rate as far as the customers go.
12 And we've -- we've seen that, all those numbers.

13 Q. Are you a current user of the system,
14 Mr. Hiley?

15 A. No, I'm not.

16 Q. Do you plan on being a user of the
17 system once it's -- if it is transferred to the 393
18 companies?

19 A. Possibly.

20 Q. Okay. What is your -- what was your
21 role -- you've already explained your affiliation
22 with the 393 companies as being an advocate. What
23 was your role with regards to the bylaws?

24 A. I had no role with regard to the bylaws.

25 Q. Then why did Mr. Pugh contact you?

1 A. I -- because he knew that if I had a
2 copy, I'd probably give it to him.

3 Q. He --

4 A. We've been very good -- we've been very
5 good friends.

6 Q. Did yourself or any other individuals of
7 the 393 companies not understand the importance of
8 making the bylaws available to the residents prior to
9 a vote?

10 MR. COMLEY: That calls for speculation
11 on the witness's part.

12 JUDGE STEARLEY: I agree and I will
13 sustain. You can rephrase, Ms. Orlor.

14 BY MS. ORLER:

15 Q. Was the expense of duplicating the
16 bylaws the sole reason for not making these copies
17 available to the residents?

18 A. I can't answer that. I didn't author
19 the bylaws.

20 Q. Excuse me?

21 A. I did not author the bylaws.

22 Q. I don't know what that answer had to do
23 with my question, but --

24 JUDGE STEARLEY: I'm not sure either,
25 Ms. Orlor.

1 THE WITNESS: Ask the question again.

2 JUDGE STEARLEY: I believe the question
3 has been asked and answered, we just had a little
4 additional testimony. If you'd like -- at your
5 request I will strike that.

6 MS. ORLER: No, that's fine. That's
7 fine.

8 BY MS. ORLER:

9 Q. Now, on your testimony on line item
10 No. 13.

11 A. What page, Cathy?

12 Q. I'm sorry, page 3. You said, "I
13 suggested that they, Cathy Orler's group" -- when you
14 say "Cathy Orler's group." What are you meaning by
15 that statement?

16 A. The group of complainants and
17 interveners that you're the leader of.

18 Q. And what documentation do you have to
19 support the fact that I lead this group?

20 A. I think you'd have to be fairly blind to
21 not realize that you don't lead this group. That's
22 my opinion that you lead this group.

23 Q. And in your opinion that I lead this
24 group, what does that role mean?

25 MS. HEINTZ: Objection, your Honor.

1 It's vague and argumentative.

2 JUDGE STEARLEY: It is vague. Could you
3 please rephrase, Ms. Orlor?

4 BY MS. ORLER:

5 Q. If I lead this group, what does that
6 mean?

7 A. It means that you instigate most of the
8 actions and complaints and, you know, that you need
9 to do to try to bring forward your case. It's not
10 meant to be derogatory, Cathy. It just -- it just is
11 a means to easily identify who we're talking about
12 here. It's not meant to be something against you.

13 Q. Are you aware that there were nine
14 individual --

15 A. Yes, I am.

16 Q. -- formal complaints filed?

17 A. Yes, I am.

18 Q. Are you aware of the fact that when the
19 complaints were consolidated by the PSC, that it was
20 done out of a convenience of communications,
21 paperwork, et cetera?

22 A. Yes, I am.

23 Q. Okay. Now, referencing page 3, line 21
24 of your testimony, did you approach complainants Ben
25 Pugh and myself and ask us to leverage our formal

1 complaints against Folsom Ridge and request that
2 Folsom Ridge provide cash to the 393 companies as a
3 reserve account in exchange for us dropping our
4 complaints?

5 A. No, I did not.

6 Q. You're stating under oath today that you
7 did not approach Benjamin Pugh and myself and ask us
8 to leverage our formal complaints against Folsom
9 Ridge requesting Folsom Ridge to provide cash to the
10 393 companies in exchange for us dropping our formal
11 complaints with the Public Service Commission?

12 MS. HEINTZ: Your Honor, that question
13 has been asked and answered.

14 JUDGE STEARLEY: It has been asked and
15 answered.

16 THE WITNESS: I will --

17 MS. HOLSTEAD: The question has been
18 asked and answered.

19 JUDGE STEARLEY: It's been asked and
20 answered. You don't need to respond.

21 THE WITNESS: All right.

22 JUDGE STEARLEY: And I won't let you
23 respond.

24 BY MS. ORLER:

25 Q. Can you explain, then, what you are

1 referring to in your testimony with line items 22, 23
2 and then beginning on page 4, lines 1 and 2?

3 A. When Ben and I were on the conversation
4 in which he called me, we began to talk about the
5 water/sewer situation for Big Island, and in the
6 course -- in other words, I didn't approach you, we
7 called and began talking cordially.

8 And one of my ideas for a quick
9 settlement to the case is what I am talking about
10 here, my ideas for a quick settlement. This case has
11 gone on for 19 months and there's a lot of people on
12 the island and perhaps in a lot of places that would
13 like to see this case be settled. And so I was
14 looking for quick settlement and I wanted to talk to
15 Ben about that, and that's what the conversation was
16 about.

17 Q. And in the statement you made, "Orler,
18 et al would drop the complaint case if Folsom Ridge
19 would pay back the monthly fees," what do you mean by
20 that statement?

21 A. That was an idea for a quick settlement.
22 If -- if, in fact, the monthly fees are deemed not
23 legal by PSC, then -- and I -- and I said if that
24 would be the case, then perhaps a way to settle the
25 case would be for those fees to be paid back to the

1 so-called noncustomers as a -- as a means to settle
2 the complaint case.

3 Q. And in reviewing your testimony, does it
4 refresh your memory about a conversation that you had
5 with Ben Pugh and myself at Central Bank the morning
6 after the vote with regards to this topic?

7 A. I remember a conversation I had with you
8 and Ben the morning after. I don't recall it was on
9 this particular topic.

10 Q. What do you recall about that
11 conversation?

12 A. I just recall that we were talking about
13 the case which you had filed that day in civil court
14 and I was asking about that, and you asked Ben not to
15 say any more to me and we ceased talking about it.

16 Q. So you're stating, then, that the nature
17 of the conversation at Central Bank after the meeting
18 which then the vote was held to transfer assets, that
19 discussion was with regards to the petition that had
20 been filed?

21 A. Yes.

22 MS. HOLSTEAD: Objection, your Honor.
23 Question asked and answered.

24 JUDGE STEARLEY: It is asked and
25 answered.

1 BY MS. ORLER:

2 Q. And that is your testimony under oath?

3 MS. HEINTZ: Your Honor, there has been
4 an asked and answered objection to the question.
5 It's already sustained.

6 JUDGE STEARLEY: Let's move on to your
7 next question, Ms. Orler.

8 BY MS. ORLER:

9 Q. On page 4 of your testimony, you're
10 referencing a conversation that you had with me,
11 then, later that evening, and you're stating that I
12 first asked if -- "Cathy called me that night and
13 first asked if I knew that Folsom was in total
14 control of the asset transfer vote because they had
15 voted one vote per lot."

16 Are you aware that with the current
17 arrangement and the current homeowners association
18 that the vote is by lots?

19 A. Yes, I am.

20 Q. And are you a member of the current
21 homeowners association?

22 A. No.

23 Q. And how do you know that you're not a
24 member?

25 A. Because I didn't ratify the bylaws.

1 Q. And why not?

2 A. At the time, which is many years ago, I
3 didn't want -- I was afraid that I would be assuming
4 financial liability for that system, so I did not
5 ratify it.

6 Q. And at what point -- you said that was
7 many years ago. Why, in recent years, then, have you
8 not joined?

9 A. I didn't think joining made much
10 difference one way or the other. I paid my fees
11 that -- the monthly fees for someone now hooked on
12 and I participated in the meeting and there was no
13 request that I join, so it was not important to me.

14 Q. Did you vote at the meeting?

15 A. I probably voted.

16 Q. Now, you've stated that you knew that
17 the vote was controlled by Folsom Ridge with your
18 voting of lots. Why did you vote?

19 A. I think -- I think people that came to
20 the meeting voted. They knew what -- they knew what
21 the rules were, but if we were asked to vote, we
22 voted.

23 Q. Okay. Now, with regards to the vote to
24 transfer the assets, was the question asked prior to
25 the vote being taken how many lots Folsom Ridge would

1 be voting that morning?

2 A. I don't recall that it was. It may have
3 been, Cathy, but I just don't recall.

4 Q. Do you recall a personal statement that
5 you made after the vote had been taken with regards
6 to the vote and the voting of lots?

7 A. I don't understand your question.

8 Q. Did you make a statement after the vote
9 to transfer the assets of the utility was taken,
10 did you make a statement -- and I'm paraphrasing --
11 that the vote didn't make much difference if Folsom
12 Ridge was voting approximately 250 lots?

13 A. Yes, I did.

14 Q. Thank you. Now, returning to page 4 of
15 your testimony, on line No. 19 you have made
16 reference to -- and I'll use the quote, "Some kind of
17 lawsuit," and then you say later, "She cautioned Ben
18 to be quiet and not tell me any more." What did you
19 mean by that statement?

20 A. This was just a statement that I
21 recorded in my notes that I wrote down just as soon
22 as that meeting was over, and that was my
23 recollection of the meeting, that -- you know, that I
24 made like a day after the meeting. And it was just
25 a -- interesting to me that when Ben and I were

1 talking and you came up, you told him to be quiet and
2 he acted upset to me and he shut up. Nothing
3 particularly meant by it, Cathy, at the time. I
4 think we may have been talking about the civil suit
5 filing.

6 Q. Did you know that we had been instructed
7 by an attorney not to have personal conversations?

8 A. No, I did not.

9 Q. Okay. Thank you. Now, in your
10 testimony when we were discussing -- or in your
11 testimony when we were discussing --

12 A. What page, Cathy?

13 Q. Well, just a moment, here. When we were
14 discussing the vote of one vote per lot by Folsom
15 Ridge with regards to the transfer of the assets, and
16 I asked you if you were aware that Folsom Ridge was
17 in control of the vote and you said that you were,
18 then you replied with, "Do you think I'm stupid?"

19 A. What's your point?

20 Q. Well, and that's what you've said in
21 your testimony, "She never told me what her point
22 was." If the vote of the HOA is controlled by Folsom
23 Ridge, do you feel that any member of that
24 association had control over the transfer of those
25 assets?

1 A. I explained that in my testimony. I
2 knew that Folsom controlled the transfer of assets as
3 far as the Big Island Homeowners Association meeting
4 was concerned. And what I said in my testimony right
5 here is that the customer or the Big Island resident
6 count was very important, more important than the lot
7 count, because it had to do with whether or not the
8 393 would be approved by PSC for one thing, and also
9 if there wasn't a majority of people in favor of the
10 393, that there's no way that the 393 board would
11 even take this action forward. So in my mind, that
12 the important vote count and that was the count that
13 I think got the most attention.

14 Q. And where did that vote appear?

15 A. Where did it appear?

16 Q. Or how did it appear?

17 A. Well, it's appeared in Mr. Rusaw's
18 testimony, that vote.

19 Q. No. I mean how did it appear on a
20 ballot or a proxy?

21 A. It just asked if you were for the 393.

22 Q. Did it appear on the same proxy or
23 ballot that was also used to transfer the assets?

24 A. I believe so.

25 Q. Thank you.

1 A. Uh-huh.

2 Q. Now, also in your testimony on line 13,
3 page 5, you say that, "Very few 393 advocates on the
4 island would ever trust her," and you're -- you're
5 referring to me, and then you say "Sorry." Why are
6 you saying that very few 393 advocates on the island
7 would ever trust me?

8 A. It's an opinion. It's just my opinion
9 and it's an opinion I wrote down. There's very --
10 there's many, many people on the island, particularly
11 those that use the water/sewer system, that are happy
12 with all of this -- all of these complaints and the
13 way that it's been carried on for the past 19 months.

14 Q. Very happy?

15 A. You must know that, Cathy.

16 Q. Very happy or unhappy, what did you say?

17 A. They're very unhappy with the way this
18 thing has gone here with PSC.

19 Q. And where -- what type of information
20 has been distributed to them with regards to the
21 process of 19 months?

22 A. I have -- I have actually put out quite
23 a bit of information, particularly back last June
24 when we had the public hearing in Camdenton. I put
25 out all of the information -- not all of it but most

1 of the information that the people saw so that they
2 could participate in a public hearing and have the
3 facts.

4 MS. ORLER: At this time could I show
5 Mr. Hiley Exhibit No. 36, please?

6 JUDGE STEARLEY: I was gonna say, my
7 marking for Exhibit 36 is a circuit court case number
8 document, the allegations that were filed, and this
9 is not Exhibit 36.

10 MS. ORLER: Okay.

11 JUDGE STEARLEY: If you'd like to have
12 that document marked to be an exhibit and show it to
13 Mr. Hiley and attempt to identify it and authenticate
14 and offer it into evidence, you may do so, but it is
15 not Exhibit 36 in our record.

16 MR. MILLS: Your Honor, for some reason
17 I have the document that Ms. Orlor is referring to.
18 It was in my stack between 35 and 37, but it's not
19 marked 36. So I'm not sure where the confusion lay,
20 but --

21 JUDGE STEARLEY: If you'd like to mark
22 it, take it to the court reporter and we will mark it
23 as Exhibit 104. And do you have copies for all the
24 parties and myself?

25 MS. ORLER: No, I don't.

1 JUDGE STEARLEY: Well, I don't know how
2 long our data center is open, if they're open till
3 5:00 or --

4 MS. HEINTZ: 4:30 I think.

5 MR. MILLS: Yeah, I think -- when we
6 were first marking these exhibits, there was a fair
7 amount of confusion and some packets had duplicates
8 of one and not others, but I don't have this
9 identified as Exhibit 36.

10 JUDGE STEARLEY: I don't either.

11 MR. MILLS: I don't -- I don't think any
12 of the parties do.

13 JUDGE STEARLEY: The data center is
14 closed. At this point I don't know -- is it,
15 Ms. Heintz?

16 MS. HEINTZ: I don't know if it's 4:30
17 or five o'clock, your Honor.

18 JUDGE STEARLEY: All right. I'll tell
19 you what, let's take a brief intermission and you can
20 check to see if the data center is open and make
21 copies of that document and we'll go off the record
22 here for a moment.

23 MS. HEINTZ: I'll be right back. Thank
24 you.

25 (DISCUSSION HELD OFF THE RECORD.)

1 JUDGE STEARLEY: We are back on the
2 record and I believe we have been able to resolve the
3 mystery surrounding these documents. And we will be
4 looking at exhibits -- what have been marked
5 Exhibits 33, Exhibit 34 and Exhibit 35 which I had
6 earlier held rulings on as far as their
7 admissibility.

8 Ms. Orlor will now have a chance to
9 attempt to authenticate those documents with this
10 witness, and she may approach the witness and offer
11 him copies of those documents.

12 MR. MILLS: Your Honor, just to speed
13 things up, I gave the witness a copy of 33, 34 and
14 35.

15 JUDGE STEARLEY: Okay. Thank you.

16 MS. ORLER: Both pages of 35?

17 MR. MILLS: Yes.

18 JUDGE STEARLEY: Thank you, Mr. Mills.

19 THE WITNESS: I'm not sure which is
20 which, but ...

21 MR. MILLS: 35 is two documents, one is
22 two pages stapled together, and the other is that
23 single page that we've just talked about that has
24 your name at the bottom.

25 MS. HEINTZ: Your Honor, if the copies

1 that the witness has are not marked, he can compare
2 them with mine which are -- if I may approach?

3 JUDGE STEARLEY: You may approach and
4 take your pen with you and mark them if they're not
5 marked.

6 THE WITNESS: They've been marked by
7 somebody.

8 JUDGE STEARLEY: So if Ms. Orler were to
9 ask a question about a particular --

10 THE WITNESS: I don't want her to be on
11 one page and me on another one.

12 JUDGE STEARLEY: -- a particular item or
13 a number, Mr. Hiley will know.

14 MS. HEINTZ: This was 35 and I've got --

15 THE WITNESS: Right. And this one is
16 33.

17 MS. HEINTZ: That's 33.

18 THE WITNESS: And 35 is these two. So
19 this is the second part of 35.

20 MR. MILLS: This is 35?

21 THE WITNESS: Yes.

22 MR. MILLS: That's 35 and that's 35.
23 There you go.

24 JUDGE STEARLEY: All right. Ms. Orler,
25 you may proceed with your questioning regarding these

1 documents.

2 BY MS. ORLER:

3 Q. Mr. Hiley, with regards to the document
4 entitled "Big Island Property Owners" and says,
5 "Regards, Phil Hiley" at the bottom with your
6 telephone number --

7 JUDGE STEARLEY: Would you refer to that
8 by number for us all, please?

9 MS. ORLER: Well, I don't think we've --
10 35 -- the second half of 35 is what we're referring
11 to.

12 JUDGE STEARLEY: What my suggestion
13 would be, Ms. Orler, is that you begin with
14 Exhibit 33 and we'll go in order through the
15 documents.

16 MS. ORLER: Okay.

17 BY MS. ORLER:

18 Q. Mr. Hiley, beginning --

19 JUDGE STEARLEY: I think we're all
20 probably fairly easily confused at this point in the
21 day.

22 BY MS. ORLER:

23 Q. Okay. Beginning with Exhibit 33, can
24 you identify this exhibit, Mr. Hiley?

25 A. Yes, I can.

1 Q. And is this an e-mail sent by you?

2 A. There's two -- there's two e-mails on
3 here. One, it was sent to me by Mr. Burford, and
4 then my response to him.

5 Q. And can you tell me what individuals are
6 involved in this e-mail?

7 A. Mr. Burford and myself.

8 Q. And is Mr. Rusaw referenced in this
9 e-mail?

10 A. Yeah, I think -- yeah, he is. Yes, he
11 is.

12 Q. Can you explain to the Commission the
13 nature of this e-mail and why was it sent?

14 A. This e-mail had to do with the planning
15 and zoning issues on Big Island which were being
16 addressed in 2005, the early part of 2005 after the
17 planning and zoning people in Camdenton had made
18 their ruling. I don't see how it's pertinent to
19 water/sewer issues, but this was about planning and
20 zoning.

21 Q. Is Mr. Burford a member of the 393
22 board?

23 A. Yes, he is.

24 Q. And what position does he hold?

25 A. He's one of the board members.

1 Q. And are you an advocate of the 393
2 companies?

3 A. Yes.

4 Q. And is Mr. Rusaw part of these
5 proceedings?

6 A. Mr. Rusaw -- of course.

7 Q. Okay. I'd like to describe the nature
8 of this e-mail. It references a new HOA on the
9 island --

10 JUDGE STEARLEY: Ms. Orler, you'll be
11 getting into testimony here. You may ask questions
12 about the document.

13 BY MS. ORLER:

14 Q. Okay. Was this regarding a new
15 homeowners association on the island for water and
16 sewer utility?

17 A. No.

18 Q. Was it regarding a new homeowners
19 association on the island?

20 A. No.

21 Q. It was not?

22 A. No.

23 Q. How do you explain in the second half of
24 the e-mail, "A new HOA" -- "A new HOA setup." What
25 HOA are you referring to?

1 A. Okay. What -- what you were asking me
2 about was the purpose of these e-mails in my opinion.
3 The purpose of these e-mails was not about setting up
4 a new HOA. It might have been part of what would
5 have had to have happened eventually, but that was
6 not the main topic of discussion here. The topic of
7 discussion here was the possibility that the
8 residents would buy the center of the island from
9 Folsom Ridge.

10 Q. And how would that purchase take place?

11 MS. HOLSTEAD: Objection, your Honor.
12 This line of questioning is not at all relevant to
13 the issues before this court. I believe we've
14 received enough information to know that this
15 document is not relevant.

16 MR. COMLEY: I join in that objection.
17 Whether there was a proposed sale of property on the
18 interior of the island is irrelevant to the
19 proceedings.

20 JUDGE STEARLEY: I will sustain that
21 objection. Well, before I do, Ms. Orlor, would you
22 respond to how you believe this would be relevant to
23 the issues before the Commission?

24 MS. ORLER: Yes. It was involving a new
25 HOA being set up with the requirement of all

1 individuals who had water and sewer taps to be
2 members. The association would purchase property
3 which would be the center of the island and if --

4 JUDGE STEARLEY: All right. That --
5 that does not go back to the adopted issues list in
6 this case, so I am going to sustain the objection.
7 If you have further questions about the document, you
8 may continue.

9 BY MS. ORLER:

10 Q. Was -- was there a full disclosure made
11 regarding this to all residents on the island,
12 Mr. Hiley?

13 A. Yes.

14 Q. A total and full disclosure --

15 A. Yes.

16 Q. -- regarding the fact that liens --

17 MS. HEINTZ: Your Honor, this question
18 has been asked and answered.

19 JUDGE STEARLEY: It was asked and
20 answered. You don't need to repeat the question
21 twice, Ms. Orler.

22 BY MS. ORLER:

23 Q. Were residents informed that if they
24 could not afford their proportionate share of this
25 purchase or didn't agree to the purchase --

1 MS. HOLSTEAD: Objection, your Honor.
2 Again, this is going into a very irrelevant topic to
3 the issues before this court today.

4 JUDGE STEARLEY: I would agree, this
5 does not relate to the issues of whether or not the
6 current homeowners association falls under the
7 regulation of the Public Service Commission or as to
8 the proposed transfer of the assets of the current
9 homeowners association, so I will sustain the
10 objection.

11 BY MS. ORLER:

12 Q. All right. If you could please look at
13 Exhibit No. 34, Mr. Hiley.

14 A. (Witness complied.)

15 Q. Was this an e-mail sent to Mr. Jim
16 Merciel of the Public Service Commission from either
17 yourself or Mrs. Hiley?

18 A. Sent to Jim or from Jim?

19 Q. From.

20 A. This looks like a copy of an e-mail sent
21 to Jim from my wife.

22 Q. Okay. That's what I'm -- yes, that's
23 what I'm asking. Now, in this e-mail Mrs. Hiley
24 indicates that she keeps a database of all Big Island
25 property owners; is that correct?

1 A. Yes.

2 Q. And is this database used for
3 correspondence to residents on Big Island?

4 A. Yes.

5 Q. And are these correspondences sent for
6 what reasons?

7 A. To keep the people informed.

8 Q. Keep the people informed. And are -- in
9 terms of keeping the people informed, is this
10 information sent to all the residents on Big Island?

11 A. Sometimes.

12 Q. Sometimes. Could you please look at the
13 second half of Exhibit 35, please, entitled "Big
14 Island Property Owners", and at the bottom you say,
15 "Regards, Phil Hiley"?

16 A. Yes. I can't authenticate that because
17 it's not -- doesn't have a date, it's not on typical
18 e-mail format. Could be a draft from some Word
19 document. I can't authenticate that last half of 35.

20 Q. Do you recall having sent something like
21 this to residents on Big Island?

22 A. I may have.

23 Q. You may have. Would there be a reason
24 why the title of this document is "Big Island
25 Property Owners, Noncustomers of the Community Water

1 System"?

2 A. During the whole course of -- from the
3 time you filed your complaints until the --
4 particularly until the June public hearing in 2005 --
5 '6, during that whole course of time there was no
6 information available from yourself or anyone in the
7 complaint group.

8 So I had taken it upon myself, along with
9 Pam, to offer information to the residents, and that
10 information was offered to the noncomplainants
11 because I figured that your group was informed. And
12 what we were trying to do was to inform the
13 noncomplainants about what was going on, pure and
14 simple.

15 Q. Now, you say that there was no
16 information sent from the complainants to any of the
17 residents on Big Island regarding the complaints that
18 have been filed?

19 A. You wrote a e-mail, I think it was in
20 September right after you filed your complaint, and
21 invited others to do the same if they wished. That
22 was in September of 2005, I believe. There was no
23 other information offered to my knowledge to the
24 general folks on Big Island until May of the
25 following year, just before the public hearing, and

1 that, I believe, was sent out by Cindy.

2 So during that whole course of time,
3 several months, six or eight months there, there was
4 no information from the complainant group. So I took
5 it upon myself along with Pam, to -- to do that, and
6 it was factual information.

7 Q. So in the e-mail that I sent to all of
8 the residents, the only information I included in
9 that e-mail was asking --

10 MS. HEINTZ: Your Honor, I don't believe
11 evidence of Ms. Orler's e-mail is in the record and
12 this would constitute testimony. I object.

13 JUDGE STEARLEY: It would. If you could
14 just ask a question, Ms. Orler.

15 BY MS. ORLER:

16 Q. You're stating to the Commission that
17 the only information -- that there was no information
18 sent from the complainants to the residents --

19 MS. HOLSTEAD: Objection, your Honor,
20 the witness has already made his statement. It
21 doesn't need to be restated.

22 JUDGE STEARLEY: I believe that has been
23 asked and answered, Ms. Orler.

24 BY MS. ORLER:

25 Q. Did complainants ever approach you, such

1 as myself or Mr. Pugh or Ms. Fortney, about wanting
2 to share with you the information of PSC regulation
3 and the complaints that have been filed?

4 A. Not that I recall.

5 Q. You're stating that no one ever came to
6 you and suggested, "Phil --

7 MS. HEINTZ: Your Honor, this has been
8 asked and answered.

9 JUDGE STEARLEY: It has been asked and
10 answered. I will sustain. Next question, please,
11 Ms. Orler.

12 BY MS. ORLER:

13 Q. On Exhibit 35, Mr. Hiley --

14 JUDGE STEARLEY: Are we looking at the
15 first part or second part at this time, Ms. Orler?

16 MS. ORLER: This will be about the
17 middle of this document.

18 MS. HEINTZ: Of the front page?

19 MS. ORLER: Yes, the front page.

20 JUDGE STEARLEY: Of -- okay. The front
21 page.

22 MS. ORLER: Uh-huh.

23 JUDGE STEARLEY: Okay. Thank you.

24 BY MS. ORLER:

25 Q. You're referring to "Noncomplainants and

1 the silent majority up until now." Can you tell me
2 if this e-mail was shared with all residents on the
3 island?

4 A. This e-mail was written to the
5 noncomplainers, just as it says there, and I cannot
6 authenticate this thing without the notes that are
7 written in the margins and elsewhere are removed.

8 Q. Thank you. Who's the silent majority?

9 A. Silent majority would be many of the
10 noncomplainers who, up to that time, didn't know a
11 whole lot about what was going on. And so what I was
12 trying to do was get them to be aware so that they
13 could testify at the public hearing, was my sole
14 purpose. I wanted to make themselves known at the
15 public hearing.

16 Q. Did you approach any of the complainers
17 and ask them to be a part of this information --

18 A. No, I did not.

19 Q. -- that was distributed?

20 A. No, I did not.

21 Q. Were they invited to be a part of any of
22 these meetings?

23 A. They were not to -- not invited to this
24 particular meeting.

25 Q. Were they invited to any meetings?

1 A. No, probably not.

2 Q. And why was that?

3 A. Your group was the complainant group.

4 This was the noncomplainant group. I did ask Ben one
5 time that I can remember if we -- if you wanted to
6 get together and have a discussion, and he did not
7 want to do that.

8 Q. And what was his reasoning?

9 A. I --

10 MS. HEINTZ: Your Honor, that calls for
11 speculation and the witness cannot answer that
12 question.

13 JUDGE STEARLEY: That will be sustained.
14 I'm directing you not to answer, Mr. Hiley.

15 MS. ORLER: Exhibit No. 75. I think
16 this was one that was being held also for
17 authentication. It was being held for authentication
18 for Mr. Hiley.

19 JUDGE STEARLEY: Okay. By my
20 recollection, I'd made a ruling that I believe I did
21 say you would have another attempt when Mr. Hiley was
22 on the stand to authenticate this document, but I'm
23 having trouble finding my copy of it.

24 MS. HEINTZ: We don't have copies of it
25 either, your Honor. The attorneys have been talking.

1 MS. ORLER: I've got the copies here.

2 JUDGE STEARLEY: All right. But do you
3 have enough copies to distribute them to all of us?

4 MS. ORLER: Yes, including you.

5 JUDGE STEARLEY: Good. I'm glad I
6 hadn't lost something there. In my many piles I can
7 certainly shuffle things around.

8 BY MS. ORLER:

9 Q. You have this copy, don't you,
10 Mr. Hiley?

11 A. Is this 35?

12 Q. 75.

13 A. Oh, 75. No, I don't.

14 Q. Okay. Can you identify this document,
15 Mr. Hiley?

16 A. Yes, this looks like a document sent
17 from Reggie to Big Island residents, Reggie Golden to
18 the Big Island residents.

19 Q. And can you please identify that you did
20 indeed give me a copy of this e-mail, do you recall
21 that?

22 A. Give you a copy?

23 Q. Uh-huh.

24 A. Well, if it was sent to all the Big
25 Island residents, I presume you would have gotten a

1 copy.

2 Q. Thank you. This was sent by Mr. Reggie
3 Golden with regards to the planning and zoning that
4 you referenced earlier in the year of 2004 or 2005?

5 A. Yeah.

6 Q. And why did Mr. Golden send this e-mail?
7 What was the purpose in sending the e-mail?

8 MS. HOLSTEAD: Objection. It calls for
9 Mr. Golden's testimony and not Mr. Hiley's.

10 MR. MILLS: Mr. Hiley received this from
11 Mr. Golden and for whatever reason decided to pass it
12 on to all residents, and I think --

13 JUDGE STEARLEY: I was gonna say that --

14 MR. MILLS: -- Mr. Hiley's understanding
15 of why it was to be passed on to all residents --

16 JUDGE STEARLEY: -- he can testify as to
17 the reason he passed it on but certainly cannot
18 speculate as to the reason that Mr. Golden may have
19 sent it originally.

20 MS. ORLER: Thank you.

21 JUDGE STEARLEY: Do you understand how
22 to answer that question, Mr. Hiley?

23 THE WITNESS: Yes.

24 JUDGE STEARLEY: Okay. You may -- you
25 may answer then.

1 THE WITNESS: It says in the very first
2 line why we passed it on. We were asked to pass this
3 on to the residents by Mr. Golden, and as I've
4 testified before, my wife has the database to all the
5 correct e-mails and so forth and addresses for people
6 that don't have e-mail. And so quite often when
7 things need to be sent to everyone, my wife is asked
8 to do it.

9 BY MS. ORLER:

10 Q. Did Mr. Golden want to notify the
11 residents that the center of the island had been
12 replatted into 223 single-family lots?

13 A. I think that's the subject matter here,
14 yes.

15 Q. And did Mr. Golden also want the
16 residents to know that while he or we, meaning Folsom
17 Ridge, did not believe this necessarily serves us or
18 you in the best interest, that they did it to protect
19 their property rights based on the planning and
20 zoning meeting?

21 MR. COMLEY: Your Honor, I'm going to
22 object to the continued line of questioning about
23 this. I do question the relevance of why this would
24 be important to the issues. We're very much on the
25 boundary of -- very much on the boundary of relevance

1 if we haven't passed it already.

2 JUDGE STEARLEY: All right. Ms. Orler,
3 why do you believe this is relevant?

4 MS. ORLER: It's relevant because of the
5 fact that Folsom Ridge has stated throughout these
6 proceedings that they have made an effort to work
7 with the residents with regards to the future plans
8 of Folsom Ridge and their development as well as work
9 with residents to a resolve to the utility issues.

10 JUDGE STEARLEY: Okay. I believe we've
11 already determined that the future plans and
12 development are out of the scope of this case and I'm
13 going to sustain that objection. If you have other
14 questions about this document, you may proceed.

15 MS. ORLER: No, that's all I have.
16 Thank you.

17 JUDGE STEARLEY: All right. Is that the
18 end of your cross or --

19 MS. ORLER: Yes.

20 JUDGE STEARLEY: Okay. Now, before you
21 leave the podium, would you like to offer these
22 documents into evidence at this time?

23 MS. ORLER: Yes, your Honor, I would.

24 JUDGE STEARLEY: Okay. Now, we're going
25 to begin with Exhibit 33. And are there any

1 objections to the admission of Exhibit 33?

2 MR. COMLEY: Your Honor, this concerns
3 matters to which objections were already made and it
4 is irrelevant. The concerns about the negotiations
5 for purchasing part of the island, these negotiations
6 are irrelevant and Exhibit 33 is irrelevant to this
7 action.

8 MS. ORLER: Your Honor, I provided
9 testimony indicating my concerns with the transfer of
10 the utility assets with regards to real estate being
11 transferred. Mr. Comley provided all of us yesterday
12 after evening -- yesterday evening with a copy of the
13 asset transfer agreement. Still, there are no legal
14 descriptions with regards to what property is being
15 transferred. I think this sets a precedence --
16 precedent with regards to that fact.

17 MR. COMLEY: There's nothing in this
18 e-mail indicating that it is contrary to the
19 application and the intention of the parties to sell
20 the assets and describe them.

21 JUDGE STEARLEY: I agree and I will
22 sustain the objections on the ground of it being
23 irrelevant, and it will not be received into
24 evidence.

25 Now, with Exhibit 34, any objections to

1 the admission of Exhibit 34?

2 MS. HEINTZ: I would object insofar as
3 that it appears that Toni Hiley wrote this e-mail.
4 She is not here. We have her husband's testimony,
5 but there is not even a signature on here that he
6 can -- he can attest to recognizing. And I think
7 that if Ms. Orler wants to offer this exhibit, she
8 should do it when Mr. Merciel is on the stand.

9 MS. ORLER: That's fine.

10 JUDGE STEARLEY: We can give you another
11 shot of further authentication. I believe you have
12 laid a little bit of foundation for it, though, so
13 we'll just put that on hold for the moment.

14 Moving to Exhibit 35, objections?

15 MR. COMLEY: Your Honor, I would object
16 on the grounds that there are interpretive commentary
17 throughout Mr. -- what appears to be Mr. Hiley's
18 e-mail, commentary and circles and that kind of
19 thing. And because of that, I would object to the
20 admission of this -- this document.

21 MS. ORLER: If it can be provided as a
22 clean document, would it be acceptable?

23 JUDGE STEARLEY: Mr. Hiley's indicated
24 he could not -- I believe actually testified he could
25 not authenticate this document from the stand.

1 MS. HEINTZ: I believe he only said he
2 couldn't authenticate the final page.

3 JUDGE STEARLEY: Yeah, I believe --
4 believe that's correct.

5 THE WITNESS: I could not authenticate
6 it with comments. I believe that was my testimony.

7 JUDGE STEARLEY: Do you have a clean
8 copy of this document available to you at this
9 moment?

10 MS. ORLER: Not at this moment, no.

11 JUDGE STEARLEY: Now would be the time
12 to have that document. The document in its current
13 form I don't believe can be fully authenticated, and
14 I will sustain the objection as to it being
15 unauthenticated, and hearsay, and it will not be
16 received. Exhibit 75?

17 MR. COMLEY: Your Honor, during the
18 course of examination by Ms. Orler with Mr. Hiley, we
19 objected on the grounds that the information
20 communicated about in this e-mail was irrelevant.
21 That objection was sustained, and we would again
22 raise the objection that this is irrelevant.

23 MR. MILLS: Your Honor, if I may, there
24 is -- in addition to the portion on the front about
25 the interior lots, there is a good deal of discussion

1 on the second page about the water lines, the DNR
2 violations, construction processes and plans to fix
3 those. I believe all of that information is quite
4 relevant.

5 So I think because -- I wouldn't argue
6 that every line is relevant, but there certainly is
7 information in this exhibit that is relevant to the
8 issues in this case. I think Mr. -- Mr. Hiley did --
9 did authenticate it and I think it ought to be
10 admitted on that basis.

11 MR. COMLEY: And I would add the
12 objection that there is, again, commentary on page 2
13 of the exhibit that is, I think -- no, it's on
14 page 1, that should not be on the exhibit. It would
15 be improper for that to be on there if it's going to
16 be admitted.

17 JUDGE STEARLEY: And do you have a clean
18 copy of this document at this time?

19 MS. ORLER: No, I do not.

20 JUDGE STEARLEY: I'm going to sustain
21 the objection and it will not be received into
22 evidence.

23 MS. ORLER: That's all I have, your
24 Honor.

25 JUDGE STEARLEY: Thank you, Ms. Orler.

1 I believe we are at cross-examination with Mr. Pugh.

2 CROSS-EXAMINATION BY MR. PUGH:

3 Q. Mr. Hiley, old friend, a little while
4 ago you testified, Mr. Hiley, that Ms. -- that
5 Ms. Orler was the leader of the nine complainants?

6 A. Yes, I did, in my opinion.

7 Q. And in your opinion does that make me a
8 follower?

9 A. I guess so.

10 Q. Does that make Mr. Weir a follower?

11 A. Yes, sir.

12 MS. HEINTZ: Your Honor, excuse me. I
13 really don't see the relevance of this line of
14 questioning, and I object.

15 JUDGE STEARLEY: I don't either,
16 Mr. Pugh. Is this leading to a particular point that
17 you believe is relevant?

18 MR. PUGH: Yes. I -- Mr. Hiley, in his
19 testimony said that she was the leader. There was no
20 problem with that, and I think I have a right to
21 express my feelings that I am not a follower.

22 MS. HEINTZ: Your Honor, I would point
23 out that Mr. Pugh is not testifying right now and he
24 does not have that right. He has the right to ask
25 questions of the witness.

1 JUDGE STEARLEY: That is correct and I
2 believe it's a matter of record that you are all
3 individual complainants, and I believe it would be
4 irrelevant to continue in this line of questioning.
5 I will sustain the objection.

6 MR. PUGH: Could I change it just a
7 little bit?

8 JUDGE STEARLEY: You may rephrase --

9 MR. PUGH: Okay. Let me rephrase.

10 JUDGE STEARLEY: -- and try a different
11 approach.

12 BY MR. PUGH:

13 Q. Who is the best speaker, Mr. Hiley,
14 Ms. Orler or Ben Pugh?

15 A. You don't want me to answer that
16 question.

17 Q. Yeah, I do.

18 A. I don't think either one of you --

19 Q. I know the answer.

20 A. How about neither one of you?

21 Q. Okay. Well, I think that's the reason
22 why Ms. Orler is --

23 MS. HOLSTEAD: Objection, your Honor,
24 he's offering testimony.

25 JUDGE STEARLEY: You're testifying and

1 that remark will be stricken.

2 BY MR. PUGH:

3 Q. You and I had a telephone conversation.

4 Actually we had three of them.

5 MS. HEINTZ: Actually, I think this also
6 is testimony and I would ask that the court instruct
7 him as to questions --

8 MR. MILLS: Your Honor -- your Honor, I
9 would ask that the pro se complainants be allowed a
10 little latitude to phrase their questions. I think
11 that the question was gonna be about those
12 conversations. He's really giving the witness a
13 little information about where the question is going.
14 I don't -- I don't think that's objectionable.

15 JUDGE STEARLEY: I'm gonna agree with
16 you on this case. Mr. Pugh, please, though, try to
17 get to your question without a paragraph of
18 introduction because then we really are crossing into
19 boundaries of testimony. And I understand you want
20 to set up your question, but please -- please try to
21 condense it.

22 MR. PUGH: Yes, sir. I have a bad habit
23 of setting up my questions.

24 BY MR. PUGH:

25 Q. Mr. Hiley, I made the first contact with

1 you as you testified a little while ago; is that
2 correct?

3 A. That's correct.

4 Q. Who made the other two?

5 A. I may have called you back.

6 Q. Twice?

7 A. I don't recall about twice, but I think
8 we talked twice later. I think I did call you back
9 once.

10 Q. Yeah. Now -- okay.

11 A. Yeah. So I would stand -- I would stand
12 corrected in that regard.

13 Q. It's immaterial.

14 JUDGE STEARLEY: Gentlemen, please speak
15 one at a time for our court reporter. Even this
16 court reporter can't keep up with that.

17 MR. PUGH: I'm sorry.

18 JUDGE STEARLEY: Go ahead.

19 BY MR. PUGH:

20 Q. Was this -- was this a cordial
21 conversation you had with me?

22 A. Yes, I would say it was cordial.

23 Q. I felt the same way. What was --

24 JUDGE STEARLEY: That was --

25 MS. HEINTZ: That was testimony.

1 JUDGE STEARLEY: And that will be
2 stricken.

3 BY MR. PUGH:

4 Q. Oh, this is terrible. Mr. Hiley, can
5 you now see why Ms. Orlor is ...

6 A. Yes.

7 Q. Okay. The intent of my call was to --

8 JUDGE STEARLEY: That would be
9 testimony.

10 BY MR. PUGH:

11 Q. What was the -- what was the intent of
12 my call?

13 A. You asked if I had an extra copy of the
14 bylaws.

15 Q. Yeah. What -- what was our discussion
16 after -- after we determined that you didn't have any
17 extra hard copies?

18 A. As I said in my testimony, it was about
19 the Big Island water/sewer issues in general.

20 Q. Well, what was your -- what was your
21 point -- or what was our point in talking about Big
22 Island?

23 A. Well, we're both kind of leaders of the
24 different sides of this, and it seemed like an
25 appropriate thing to do at the time. This was just

1 after the vote was taken, where it was identified
2 that most of the people were advocates of the 393 and
3 it seemed like a good time to talk about -- about all
4 the issues.

5 Q. Do you -- we have a -- we have a
6 difference of opinion -- do we have a difference of
7 opinion on --

8 A. Most generally, most generally.

9 Q. Yes. Can good friends have differences
10 of opinion?

11 A. Yes.

12 Q. Do you want the best for Big Island?

13 A. You bet.

14 Q. Do you think I want the best for Big
15 Island?

16 A. Sure.

17 Q. Do you feel like -- do you feel like the
18 complainants at that June 2nd meeting, June 2nd,
19 2006, in Camdenton, do you think that they deserved
20 the problems that we had that day?

21 MR. COMLEY: I'll object to the
22 conclusions of the problems on the local public
23 hearing day. I think the form of the question is
24 improper.

25 JUDGE STEARLEY: I will sustain. If you

1 could rephrase, Mr. Pugh.

2 BY MR. PUGH:

3 Q. There was quite a bit of criticism --
4 criticism of me at that June 2nd meeting, correct?

5 A. Yes.

6 Q. Do you think that that was deserved?

7 A. Some of it.

8 Q. Are you aware that I was asked before
9 that meeting by one of your now board members of the
10 new 393 to move off the island?

11 A. I heard that. That would be hearsay.

12 Q. Would you believe me if I told you it
13 was not hearsay?

14 A. I would believe you.

15 MR. COMLEY: We're getting into --

16 JUDGE STEARLEY: I believe we've crossed
17 into legal conclusions on the part of both questioner
18 and answerer. If you'd please proceed to another
19 question, Mr. Pugh.

20 BY MR. PUGH:

21 Q. Yeah. Basically, you feel that a 393 is
22 better for Big Island than to be regulated; is that
23 correct?

24 A. That's correct.

25 Q. What are -- what are your reasons for

1 that?

2 MS. HOLSTEAD: Objection, your Honor.

3 It's been asked and answered.

4 BY MR. PUGH:

5 Q. Okay. Are you aware of any benefits
6 that the -- that being regulated would have over the
7 393?

8 A. Well, not really.

9 Q. Do you want to spend -- do you, as a
10 homeowner, want to spend your time in board meetings
11 trying to find out what we're gonna do with that
12 leak?

13 A. I would -- I would like -- assuming I
14 were a customer, I would like to participate in the
15 operation of the water/sewer system. I've been
16 involved in all the Big Island issues for quite some
17 time now, and I wouldn't feel any different about
18 this water/sewer board.

19 Q. Are you aware that many of the
20 homeowners that are in favor of a 393 have stated
21 that the regulated -- a regulated company would cost
22 three or four times of what a 393 would?

23 A. Well, I think three or four is too much,
24 but we -- we have said that it will cost more, about
25 twice as much.

1 Q. Are you aware that the regulated -- the
2 regulated company is allowed to make a profit of
3 something like about 10 percent?

4 A. I'm aware that that's not correct. I'm
5 aware that the PSC fees are about 10 percent.

6 Q. That's -- that's what I --

7 A. Is that what you want -- is that what
8 you meant to ask?

9 Q. The Public Service Commission fees, as I
10 understand it, are around 10 percent.

11 A. Okay.

12 Q. Again, I want to ask you, are you aware
13 that the profits that I believe that Folsom Ridge
14 could make by being regulated are approximately 10
15 percent?

16 A. No, I'm aware that that's not correct.
17 I've done a very extensive study of the application
18 study which I don't think is relevant here, but I'm
19 aware that the fees would -- would be about 40
20 percent for the developer recovering his cost, based
21 on the application that was made in the application
22 study which is not before this Commission right now.

23 Q. Well, do you believe -- have you talked
24 to any of the Staff members about the -- about the
25 profits of the PSC?

1 A. The PSC Staff members?

2 Q. Yes, sir.

3 A. Yes, I have.

4 Q. Did they tell you it would be 40

5 percent?

6 A. I -- I used the feasibility study
7 submitted by Folsom Ridge to -- to determine that.
8 It's just math, Ben. Just do the math. And at the
9 time that I did that, I gave what my findings were to
10 Mr. Rusaw and I wrote a message to Mr. -- I think it
11 was Mr. Hummel at the time, saying I made that study.
12 I didn't give him the results, but I told him that I
13 was not happy with what was in the feasibility study,
14 and I also told Folsom Ridge the same thing and
15 passed on my numbers to them, and my numbers are
16 correct.

17 Q. I'm gonna try to put this into a
18 question form. If you are correct that it's 40
19 percent, would you be willing to go in business with
20 me, and you and I will regulate it? 40 percent is
21 pretty good money.

22 A. It's pretty good money, Ben. They're
23 allowed to recover their cost if it's a for-profit
24 company. That amounts to quite a bit of money.

25 Q. Would you go in business with me and

1 we'll regulate it at 40 percent?

2 A. No, I wouldn't go into business with
3 you.

4 Q. All right.

5 MR. PUGH: I think that's all the
6 questions. Thank you.

7 JUDGE STEARLEY: Thank you, Mr. Pugh.

8 Cross-examination, Ms. Fortney?

9 MS. HOLSTEAD: Ms. Fortney has left the
10 room.

11 JUDGE STEARLEY: Does anyone know where
12 Ms. Fortney has gone?

13 MS. HOLSTEAD: Your Honor, I'll go
14 search.

15 JUDGE STEARLEY: If you wouldn't mind.
16 I'd prefer not to get out of order here. And
17 Mr. Comley, I won't skip you over this time.

18 MS. FORTNEY: No questions.

19 JUDGE STEARLEY: Thank you, Ms. Fortney.

20 MR. COMLEY: And I have no questions for
21 this witness.

22 JUDGE STEARLEY: Thank you, Mr. Comley.

23 And there are no questions from the bench, no need
24 for recross. Do you have some redirect,
25 Ms. Holstead?

1 REDIRECT EXAMINATION BY MS. HOLSTEAD:

2 Q. Mr. Hiley, how did you come -- come to
3 be in possession of a copy of the 393 bylaws?

4 A. I copied them from the PSC website. It
5 was put on after our 24 January meeting here at PSC.

6 Q. And was that website available to
7 Mr. Pugh at the same time it was available to you?

8 A. Yes, yes.

9 MS. HOLSTEAD: Okay. Thank you.

10 THE WITNESS: Uh-huh.

11 MS. HOLSTEAD: No more questions.

12 JUDGE STEARLEY: Thank you. Mr. Hiley,
13 I'd like to thank you for your patience today in
14 waiting to provide your testimony and for so
15 providing it. You may step down at this time. I
16 will not finally excuse you as a witness just in case
17 the Commissioners might wish to recall you for some
18 additional questioning, and thank you very much.

19 At this time we are ready, I believe,
20 for Staff to call its witness, Mr. Merciel. However,
21 we're also getting near six o'clock when we were
22 going to be having a change in court reporters. And
23 it's my understanding --

24 THE COURT REPORTER: Go ahead, Judge.

25 JUDGE STEARLEY: Okay. Is that -- all

1 right. Okay. A lot of times if we have a
2 convenient break in witnesses, they like to pick
3 up because we end up starting the different volumes
4 of testimony, but I'm being told by Pam we can go
5 forward.

6 So Ms. Heintz, if you would please call
7 your witness.

8 MS. HEINTZ: Jim Merciel.

9 (The witness was sworn.)

10 (EXHIBIT NO. 104 WAS MARKED FOR
11 IDENTIFICATION BY THE COURT REPORTER.)

12 DIRECT EXAMINATION BY MS. HEINTZ:

13 Q. Would you state your name, please?

14 A. James A. Merciel, Jr.

15 Q. And could you spell your name for the
16 court reporter?

17 A. James A., and then last name is
18 M-e-r-c-i-e-l.

19 Q. Thank you. And by whom are you
20 employed?

21 A. I'm employed at the Public Service
22 Commission.

23 Q. And what is your job position with the
24 Public Service Commission?

25 A. I am assistant manager, engineering, to

1 the water and sewer department.

2 Q. And you are the same James Merciel that
3 caused to be filed in this case rebuttal testimony?

4 A. Yes.

5 Q. Okay. And do you have any corrections
6 that you need to make to that rebuttal testimony?

7 A. No, I don't.

8 Q. Okay. And if I asked you the same
9 questions today, would your answers be substantially
10 the same?

11 A. Yes.

12 MS. HEINTZ: Okay. I have no more
13 questions for this witness, your Honor, and I would
14 like to offer Exhibit 104.

15 JUDGE STEARLEY: Okay. Are there any
16 objections to the admission of Exhibit 104 into the
17 record?

18 MR. COMLEY: Your Honor, maybe just some
19 clarification. Mr. Merciel's testimony incorporates
20 by reference and apparently adopts certain rebuttal
21 testimony prepared by another Staff witness, Martin
22 Hummel, in the application case which has been
23 dismissed.

24 And if the intention of the witness is
25 to adopt Mr. Hummel's testimony as it pertains to

1 facility-related issues on pages 4 through 6 and
2 ending on line 16 of page 6, I have no objection.
3 But to the extent it may be adopting material
4 concerning appropriate contribution in aid of
5 construction surcharges or customer rates, we would
6 object on the grounds of relevancy in this case.

7 MS. HEINTZ: Mr. Comley and I did
8 discuss this earlier off the record, your Honor, and
9 Staff has no objection to limiting the admission of
10 Mr. Hummel's testimony as part of Mr. Merciel's to
11 pages 4 through 6 of Mr. Hummel's testimony.

12 JUDGE STEARLEY: Okay. And are we --
13 where are we picking up on page 4? Are we picking up
14 with the facility-related issues on line 16?

15 MR. COMLEY: That would be -- my point
16 would be we begin on line 17 of page 4, going to line
17 16, I think, on page 6, and that would be the
18 limitation of his adoption of Mr. Hummel's testimony.

19 JUDGE STEARLEY: I have no problem that
20 we amend that. I also have a Staff report of
21 investigation. Is that --

22 MR. COMLEY: And that is not
23 objectionable.

24 JUDGE STEARLEY: All right. So that
25 would also come in all with the rebuttal testimony

1 then?

2 MS. HEINTZ: Yes.

3 MR. MILLS: And your Honor, I have no
4 objection to that revision. I would like to note for
5 the record that yesterday afternoon Staff counsel
6 objected several times to any discussion of shut-off
7 valves being installed for each water service
8 connection, and you sustained those objections. And
9 I pointed out at the time that I anticipated that
10 Staff would be offering testimony on that very issue
11 that they had objected so strenuously to --

12 MS. HEINTZ: Excuse me, Mr. Mills. I
13 don't think my objection was strenuous. I recall
14 making one and it was sustained, and I believe it was
15 this morning and not yesterday afternoon.

16 MR. MILLS: The testimony to which I
17 refer is at page 5 of Mr. Hummel's testimony attached
18 to Mr. Merciel's testimony, lines 19 through 23.

19 JUDGE STEARLEY: So we're talking about
20 four lines of testimony?

21 MR. MILLS: We're talking about lines of
22 testimony referencing and discussing the need for
23 shut-off valves for each service connection.

24 MS. HEINTZ: I have no objection to
25 striking his four lines of testimony if it will make

1 Mr. Mills happy.

2 MR. MILLS: I'm not asking it be
3 stricken, I'm simply pointing out as I did at the
4 time, that I think it was inconsistent to object to
5 another witness cross-examining on this issue and
6 then proposing to offer testimony later in the
7 proceeding covering the same topics.

8 THE WITNESS: May I point out something
9 for accuracy on that?

10 JUDGE STEARLEY: No, you may not,
11 Mr. Merciel.

12 THE WITNESS: Didn't think so.

13 JUDGE STEARLEY: You are not involved in
14 this debate.

15 MS. ORLER: May I ask for clarification
16 on this topic, your Honor?

17 JUDGE STEARLEY: Is it the topic we are
18 speaking about?

19 MS. ORLER: Well, actually, you just
20 bypassed it. It was CIAC but I couldn't get in
21 there.

22 JUDGE STEARLEY: What is -- what is your
23 question?

24 MS. ORLER: Is that not -- we are here
25 before the Commission to decide whether or not this

1 utility should be subject to regulation by the
2 Commission, and if so --

3 JUDGE STEARLEY: Actually, we're
4 deciding if it falls under our jurisdiction to be
5 regulated, not whether it should be regulated.

6 MS. ORLER: All right. If it falls
7 within your jurisdiction to be regulated, isn't CIAC
8 a part of that regulation and isn't it important?

9 MR. COMLEY: My response would be that
10 any -- if the Commission decides to regulate the
11 company, the next step would be for it to come
12 forward with approved rates and charges, and at that
13 point in time the Commission would have to evaluate
14 those tariffs and make judgments. At this stage that
15 is premature and the issues of rates are only related
16 to whether or not the Commission would have to
17 approve rates in connection with the transfer.

18 JUDGE STEARLEY: I agree with that
19 analysis. And also if Ms. Heintz is offering the
20 evidence with redacting that portion, it is her
21 decision to offer the evidence in, in that manner.

22 MS. ORLER: Thank you.

23 JUDGE STEARLEY: And --

24 MR. HEINTZ: I will take those four
25 lines of testimony out for Mr. Mills, yes.

1 JUDGE STEARLEY: All right. We will
2 also redact lines 19 through 23 on page 5 of
3 Mr. Hummel's rebuttal testimony which was attached
4 along with Mr. Merciel's testimony. The exhibit's so
5 amended. Do we have any further objections?

6 MR. COMLEY: No objection.

7 JUDGE STEARLEY: Hearing none, it shall
8 be admitted as amended.

9 (EXHIBIT NO. 104 WAS RECEIVED INTO
10 EVIDENCE AND MADE A PART OF THE RECORD.)

11 MS. HEINTZ: Thank you, your Honor, and
12 I tender the witness for cross-examination.

13 JUDGE STEARLEY: Thank you, Ms. Heintz.
14 And cross-examination beginning with complainants,
15 Ms. Orler.

16 MS. ORLER: Thank you.

17 CROSS-EXAMINATION BY MS. ORLER:

18 Q. Mr. Merciel, on page 3 of your testimony
19 beginning with line 15 --

20 A. Yes.

21 Q. -- you've stated that the basis for your
22 opinion is that residents believed that they, in
23 effect, owned and controlled these utility systems
24 even though they did not, that it was actually
25 controlled by Folsom. Can you explain to me how a

1 misconception or disbelief justifies the fact that
2 they -- the homeowners should indeed own and control
3 a system?

4 A. I'm sorry. I lost you on that last
5 phrase. I didn't catch the point of your question.

6 Q. Okay. Can you explain to me how a
7 disbelief or misconception of the homeowners would be
8 justification that they should actually own and
9 control the system?

10 A. I don't think that's a reason why they
11 should own and control. The point here is they --
12 they believe that they had a legitimate association,
13 that they would control it. And the reason for the
14 statement here is that, in effect, a 393 legitimizes
15 what they thought they had, a 393. In my opinion, in
16 effect -- well, actually does give the homeowners
17 control like they thought they had with an
18 association.

19 Q. But since they didn't have that control,
20 it wasn't a reality in terms of ownership and
21 responsibility; would you agree with that?

22 A. Oh, yeah, absolutely. I said that here.

23 Q. Okay.

24 A. But that's not what they thought they
25 had. The homeowners -- what I'm saying here is the

1 residents believed that they had control of the
2 association.

3 Q. So in that belief that they had control --
4 which I think we're both agreeing they did not; would
5 that be correct?

6 A. That would be correct.

7 Q. Okay. Was that a realistic approach to
8 ownership and control of the utility?

9 A. I'm not really sure how to -- I'm not
10 sure of the point of the question, that they -- that
11 they -- that they thought that they were inaccurate
12 in what they thought they had?

13 Q. Yeah.

14 A. I don't know -- I don't know if that's a
15 reason to do anything or not do anything.

16 Q. Well, if their perception is not
17 correct, but you're stating that just because they
18 thought they owned it when they didn't, that that
19 would be --

20 JUDGE STEARLEY: Ms. Orler, you're
21 starting to testify.

22 BY MS. ORLER:

23 Q. If the -- if their perception is not
24 correct that they are owning it and controlling it,
25 then how would actual ownership and control --

1 A. Maybe my best answer is, I would like
2 to -- well, I would like to point out the
3 misconception and fix it, and that's what I did with
4 the testimony, and that's what I think the 393 does.
5 There is a misconception, yes, there is one. If they
6 don't know it, let's point it out, which I think has
7 been done throughout these proceedings, and fix it
8 with a formation of a 393.

9 Q. Do you think their misconception has
10 allowed them the reality of understanding and knowing
11 what ownership and control and the responsibilities
12 that lie with that?

13 A. I could --

14 MS. HEINTZ: I'm gonna object to that
15 question. That calls for speculation.

16 MR. COMLEY: I'll join in that
17 objection.

18 JUDGE STEARLEY: It will be sustained.

19 BY MS. ORLER:

20 Q. On page 4 of your testimony, line 14,
21 you have stated, "I think that it would be reasonable
22 for the Commission to approve or disapprove the
23 transfer." Are you taking a position either for the
24 transfer or to disapprove the transfer?

25 A. Not in this answer.

1 Q. Not in that answer. Okay.

2 A. You have to read the question to see
3 that.

4 Q. On line 19 on page 4, you say that,
5 "There is some technical issues with regards to these
6 systems." Do you think in the homeowners' incorrect
7 perception that they own and control the utility --

8 MS. HEINTZ: Excuse me. That
9 characterization and the question is improper. Could
10 Ms. Orler please rephrase?

11 JUDGE STEARLEY: Yes, I will ask
12 Ms. Orler to please rephrase.

13 BY MS. ORLER:

14 Q. Do you think that the homeowners were
15 aware of technical issues in their misconception of
16 their ownership and control of the utility?

17 A. No, I think those are unrelated. To not
18 know how the homeowners association was set up I
19 don't think has anything to do with the technical
20 issues.

21 Q. But if you're not responsible for those,
22 would they not be a reality, then?

23 A. If you're not responsible for what? I'm
24 sorry. I didn't understand the question.

25 Q. If you -- if you do not have actual

1 ownership and control of the utility, would the
2 technical issues be a reality?

3 A. Well, the -- I'm not -- still not sure I
4 understand the question. The technical issues are
5 there and -- I mean, they are. If you use the word
6 "reality," they are very real. I don't know -- I'm
7 sorry. I don't know what else to say.

8 And they're there no matter -- no matter
9 who the utility is, whether -- whether it is the
10 homeowners association that the homeowners really
11 control, whether it's the association that the
12 developer controls -- I mean, the technical issues --
13 that's why I say, it's a separate issue from who --
14 who really owns and controls the utility.

15 Q. But if the developer has had control of
16 the utility and therefore responsibility for the
17 technical issues, then the perception that the
18 homeowners had control when they really didn't, would
19 they have been aware of the issues?

20 MS. HEINTZ: Your Honor, again, that
21 calls for speculation and I don't think it's a proper
22 question and I object.

23 JUDGE STEARLEY: I will sustain.

24 BY MS. ORLER:

25 Q. I'll move on. Item No. 3 on page 5, "I

1 believe the Commission should address the bylaws
2 proposed by the 393 companies." Can you elaborate on
3 that, please?

4 A. Okay. Well, that's part of my answer.
5 The question is, "Are there issues that the
6 Commission would need to address before approving the
7 transfer?" And I think this is a premise that the
8 Commission would actually approve something.

9 And if they're going to approve it, I
10 think they would want to look at the bylaws and see
11 what it is that they're approving, and that's kind of
12 the idea of approval, to see that, you know, to be
13 sure it's reasonable what -- you know, what the
14 Commission is doing.

15 Q. Do you have any suggestions to make with
16 regards to how the bylaws are written?

17 A. Yes, I do.

18 Q. And what would those be?

19 A. I would like to point out it's my
20 understanding that the bylaws are not finalized, and
21 I think it's still -- they're still being updated and
22 changed. They're not sure they're really even
23 accepted by the board there. So -- so I'm not sure
24 there's actually a finalized version of the bylaws.

25 But with that, there has been testimony

1 with regard to who can be on the board of the 393s.
2 Now, we do have two different utilities, it's the
3 sewer utility and the water utility. They're set up
4 as two different corporations.

5 The way the bylaws are written of both
6 of them, you have to be a customer of both water and
7 sewer to be on the board of -- well, of either one.
8 The idea of that being they want the same people on
9 the board of one as on the other. That's what the
10 393 people are trying to set up.

11 Now, that does leave out some people who
12 are only a customer of one. For example, if you only
13 have sewer service but if you don't have water
14 service, you would be ineligible to serve on the
15 board.

16 Q. Do you think that's an important issue?

17 A. Well, I think it's important enough to
18 raise it. It's probably a debatable point. It seems
19 to me it would be reasonable to try to have everyone
20 available to be on the board. I understand the
21 concept of wanting the same people serving both
22 because, you know, there is some overlap, so I -- I
23 understand the commonality.

24 Q. You did -- you did indicate that that
25 was an important issue to be raised. Do you think

1 that the bylaws in and of themselves are important
2 enough that final drafted version -- or finalized
3 versions of the bylaws should have been made
4 available to the residents prior to the vote of the
5 transfer of the assets?

6 A. My opinion would be yes. Yes, I do.

7 Q. And what would you consider to be an
8 appropriate amount of time that these finalized
9 versions of bylaws should have been made available so
10 that people could inform themselves prior to the
11 vote?

12 A. I really don't have an opinion on the
13 time frame or how they're made available. There's --
14 and possibly that's a shortcoming of the statutes on
15 how 393s are set up. There's really no guidance or
16 protocol on how you go about doing it. And I'm
17 afraid I really don't have any suggestions on the
18 time frame or, you know, if they're available by --
19 on the internet. And not everybody has access to the
20 internet. I don't -- that those problems, I think,
21 have been testified to, but I don't really have a
22 strong opinion on it.

23 Q. Do you recall a meeting that intervenors
24 scheduled -- intervenors and -- I guess it was
25 intervenors at that time, that myself and Mr. Pugh

1 and Ms. Fortney had with Staff members, and in that
2 meeting the bylaws of the 393 companies were
3 discussed?

4 A. Yes, I do.

5 Q. And at that time do you recall the
6 suggestions made by myself and other individuals that
7 this is something that should be made available to
8 every resident on the island?

9 A. Yes, I do.

10 Q. Did we ourselves request copies of those
11 bylaws?

12 A. I believe you did of us, not --

13 Q. And were they provided to us?

14 A. Not by the Staff. They weren't our
15 bylaws to provide.

16 Q. And what was suggestion -- what
17 suggestion was made to us from the Staff with regards
18 to obtaining copies of these?

19 A. I believe our suggestion was it needs to
20 be provided by the 393 or you go to the 393 to obtain
21 them.

22 Q. Did you suggest that we ask Mr. Mark
23 Comley for a copy of the bylaws, or someone at the
24 Staff made that suggestion that day?

25 A. I don't specifically remember. You may

1 well have, and I did leave that meeting early. I
2 just don't remember on that.

3 Q. That's right --

4 A. I don't doubt it, you know. I don't
5 doubt that you did.

6 Q. Okay. On line No. 10, page 5 of your
7 testimony you say, "Since the 393 companies are not
8 subject to regulation, I don't think any charges need
9 to be specifically approved."

10 Obviously, the 393 companies are not
11 subject to regulation. However, during the course of
12 these proceedings and testimonies provided, are you
13 aware that --

14 MS. HOLSTEAD: Objection, your Honor.
15 This is sounding like testimony.

16 JUDGE STEARLEY: Ms. Orler, can you
17 rephrase?

18 BY MS. ORLER:

19 Q. Without -- without the 393 companies
20 being subject to regulation by the PSC, are you aware
21 of regulations by DNR to ensure that charges are
22 accurately set?

23 A. Yes.

24 Q. And how are those enforced, if at all?

25 A. Well -- well, I don't know. I don't

1 know how DNR enforces them. They do apply to new --
2 new utilities, and frankly, this is an existing
3 utility. Whether they're gonna consider it a new
4 one, they may, I'm not sure about that. And I'm not
5 even sure if it's something that's enforced. It's
6 the guideline, that's something they review when they
7 issue a permit. I'm not even sure that it's an
8 enforceable thing. It may be. I don't know the
9 answer to that.

10 Q. Are you aware of any qualifications that
11 393 companies may need to meet with regards to being
12 financially sound?

13 A. Specific to 393s, no.

14 Q. So DNR doesn't make any requirements of
15 393 companies to ensure that they are financially
16 sound or capable?

17 A. Not any differently than they do
18 other -- other types of utilities.

19 Q. Okay. Now, on line 16, page 5, "A
20 charge of \$2,000 for water and \$4,800 for sewer had
21 been charged to preexisting customers and potential
22 customers." What is your opinion of those rates that
23 had been charged to existing customers and potential
24 customers in terms of accuracy?

25 MR. COMLEY: I'm going to object on

1 grounds of relevancy in this. The fees are set in
2 the agreement, the fees have been charged, and there
3 is no testimony from this witness about whether rates
4 and charges should be approved as part of the
5 transfer.

6 JUDGE STEARLEY: How do you believe this
7 is relevant, Ms. Orler?

8 MS. ORLER: The rates will affect -- the
9 rates and charges will affect every resident and
10 there has -- should there not be a cost basis or a
11 rate structure to determine how these numbers were
12 arrived?

13 JUDGE STEARLEY: I don't believe that's
14 at issue in this case for the issues that we've
15 outlined for the Public Service Commission to decide.

16 MS. ORLER: All right.

17 JUDGE STEARLEY: So that will be
18 sustained.

19 BY MS. ORLER:

20 Q. You've also provided in your testimony,
21 Mr. Merciel, the fact that the 393 companies have a
22 certain amount of flexibility, just being the type of
23 structure that they are.

24 MS. HEINTZ: I'm sorry. Ms. Orler,
25 could you point me to exactly where you are in the

1 testimony?

2 MS. ORLER: Just a moment. I did lose
3 my place.

4 THE WITNESS: Maybe the top of page 5.
5 Is that where you're -- that's where the word
6 appears.

7 MS. ORLER: Yes, I'm sorry.

8 BY MS. ORLER:

9 Q. It says, "Nonregulated entities have the
10 flexibility with regards to how they may wish to
11 handle these issues if at all." Top of page 5.

12 A. Yeah, okay. I --

13 Q. And I think you're referencing the
14 technical issues that we spoke about before?

15 A. Okay. No, that sentence actually starts
16 on page 4, "The 393 companies" --

17 Q. Yes, I'm sorry.

18 A. Okay. "These issues are" -- that's
19 referring to the technical issues that are in
20 Mr. Hummel's testimony.

21 Q. Okay. So you're making -- but you are
22 making reference to the technical issues?

23 A. Yes.

24 Q. Okay. So since you're making reference
25 to the technical issues, you've stated earlier that

1 they are significant and should be addressed; is that
2 correct?

3 A. Well, yes, that is correct.

4 Q. Okay.

5 A. We're -- yeah, the purpose here, we're
6 pointing out what we see. And again, this -- you
7 know, Mr. Hummel's testimony came from the certificate
8 case where --

9 Q. We can't talk about that now.

10 A. Well, not about the case, I guess, but
11 that's where his testimony came from. But we have
12 the same -- the same -- and as I said before, the
13 same technical issues apply no matter who the utility
14 is. My purpose here is to, you know, point this out.
15 If things like -- if I may mention valves for an
16 example where -- sorry, Mr. Mills. Or it could be
17 anything else, but if it's something that the Staff
18 would insist that a regulated company do, it may be
19 something that another utility or, you know, other --
20 others may decide it's not so important.

21 Water meters might be another example.
22 If the regulated company or the Staff thought meters
23 were important but if the 393 thought they weren't
24 important, or vice versa for that matter. The point
25 is, just because we say we think it's important or if

1 there's something we don't think is important, the
2 393 could -- you know, they might decide something
3 different, and I think they have some flexibility to
4 do so. That's what that's saying.

5 Q. Do you think that that flexibility could
6 also have a negative effect in terms of some of these
7 significant issues not being addressed, corrected or
8 resolved?

9 A. Sure, it could.

10 Q. And does that concern you at all?

11 A. Well, it might sound cold to say no, but
12 if the 393 is not regulated, they go about their
13 business as they see fit, as do municipalities and
14 water districts and other entities that we don't
15 regulate. They may conduct their business different
16 than I think they ought to, but it's not within my
17 power to do anything.

18 I can point it out here if -- you know,
19 might call it to the attention of the 393s and might
20 call something out to the Commission if they're
21 concerned about it and want to have a condition of
22 this transfer if they think they need to approve it.
23 To a great extent I'm -- you know, we're putting out
24 some information and -- for what it's worth.

25 MS. ORLER: All right. Thank you.

1 JUDGE STEARLEY: Ms. Orler --

2 MS. HEINTZ: Ms. Orler, before you leave
3 the stand, I believe that you had laid proper
4 foundation for Exhibit No. 34 but you were gonna
5 actually offer it while Mr. Merciel was on the stand.

6 MS. ORLER: Oh, thank you.

7 JUDGE STEARLEY: I was just starting to
8 say the same thing.

9 MS. HEINTZ: Sorry, I didn't hear you.

10 JUDGE STEARLEY: That's all right. You
11 got to your microphone first.

12 MS. ORLER: Exhibit 34, may I show that
13 to Mr. Merciel?

14 JUDGE STEARLEY: Yes, you may.

15 MS. ORLER: This is my copy I wrote on.

16 JUDGE STEARLEY: You may approach.

17 THE WITNESS: Okay.

18 BY MS. ORLER:

19 Q. Mr. Merciel, do you recall having
20 received this from the Hileys, this e-mail with
21 regards to the database?

22 A. Yes, I do.

23 Q. So you can authenticate the document?

24 A. Yes.

25 MS. ORLER: May I enter it at this time,

1 your Honor?

2 JUDGE STEARLEY: You may offer it. Are
3 there any objections to the admission of Exhibit 34?

4 MR. COMLEY: Your Honor, if there's a
5 way to remove the -- the other remarks at the top, I
6 would prefer -- if there is a way to copy that so
7 that that's not on there for the record, I think that
8 would be the best way to admit the -- the exhibit.
9 Otherwise, there are stray remarks on the exhibit
10 that I don't think Mr. Merciel could identify.

11 JUDGE STEARLEY: Okay. I believe
12 Ms. Orlor can provide us as a late-filed exhibit a
13 clean copy of this.

14 MR. COMLEY: And if that can be done, I
15 have no objection to it.

16 JUDGE STEARLEY: And on that basis we
17 will receive it into evidence.

18 (EXHIBIT NO. 34 WAS RECEIVED INTO
19 EVIDENCE AND MADE A PART OF THE RECORD.)

20 MS. ORLER: Thank you, your Honor.
21 That's all.

22 JUDGE STEARLEY: Cross-examination from
23 complainant, Mr. Pugh?

24 CROSS-EXAMINATION BY MR. PUGH:

25 Q. Mr. Merciel?

1 A. Yes, sir.

2 Q. What is the profit margin for a
3 regulated public utility?

4 A. Well, I guess you could figure profit
5 margin. We actually don't use that term, and there
6 is -- there is nothing that's really a profit margin
7 built into rates. The way utilities earn their money
8 is a return on the investment, and investment is the
9 dollars that the owners actually have invested in the
10 system.

11 Some -- some systems don't have any
12 investment. It might be all contributed by a
13 developer or by customers or it might be depreciated
14 out. So there has to be investment and they earn the
15 return on the investment.

16 Q. So basically, I was wrong in my
17 10 percent?

18 A. Well, actually, that number is -- is
19 about the ball park that you see on a return. If you
20 have -- if you'd drill a well for \$100,000, and it's
21 all equity, then you might get about a 10 percent --
22 actually, I think it's a little bit lower right now,
23 maybe about nine percent. I've seen it as high as
24 like 12 and 13 percent in inflationary times.

25 Q. Would a regulated public utility

1 generally cost 20 percent more than a 393; would that
2 be a true statement?

3 A. I can't say it's a true statement. It's
4 awful difficult to -- difficult to generalize.
5 Possibly a 393, some types of utilities like
6 homeowners associations have volunteer help, they
7 usually don't have investment. And I will point to
8 the -- we've talked about the \$2,000 and \$4,800
9 charges. That usually would not be charged --
10 nothing like that on a regulated utility. Instead,
11 the owners put money into it and that's where you get
12 the return on the investment. So you know, the
13 customers would pay it different ways.

14 They're -- and somebody earlier, there
15 is one difference and that's the PSC assessment which
16 is where we get our revenue from. And regulated
17 companies do pay an assessment. It's about something
18 like eight or eight and a half percent of the revenue
19 for sewer, and it's about one and a half for water.
20 So that's something that the 393 would not incur.

21 Q. Would -- would you tell me some
22 advantages of the regulated company over a 393?

23 A. Well, some advantages are -- are the
24 customers don't have to be involved with it. Rates
25 are approved by an outside -- outside means, meaning

1 here at the Commission. You have a form to file
2 complaints over customer service issues.

3 Those things aren't necessarily
4 nonexistent with a 393, but you don't have an outside
5 forum to go to, meaning you would -- you would be
6 limited, pretty well limited to your board of
7 directors to resolve those types of issues.

8 Q. Do you think that the way Big Island's
9 permanent homeowners are -- only amounts to about 25
10 percent of the population, do you think that would be
11 workable on Big Island?

12 MR. COMLEY: Your Honor, I'm gonna
13 object. I think we've established that 25 percent of
14 the population is a full-time residency. I can't
15 recall that coming into evidence.

16 JUDGE STEARLEY: I don't either and I
17 will sustain.

18 BY MR. PUGH:

19 Q. Is liability -- is liability less with a
20 regulated than a 393?

21 A. You mean liability to the --

22 Q. Liability --

23 A. -- customers?

24 Q. Liability to the homeowners, yes,
25 sir.

1 A. I don't know of any difference in
2 liability. I don't know if the customers have much
3 liability. You mean in what the company does?

4 Q. Yes, sir.

5 A. I don't know of any liability that
6 the -- that would apply to the customers.

7 Q. Do the members of a 393 have any
8 liability?

9 A. It's my understanding that they don't.

10 Q. Who pays for litigation or anything?
11 Who pays for that if -- if they have no liability?

12 A. Whether you're talking about the 393
13 or --

14 Q. Yes, sir.

15 A. -- a company or any other type? Well,
16 it doesn't matter. The customers are gonna pay for
17 it. If they're cost-incurred, it's probably gonna be
18 passed on to the customers.

19 Q. Basically that's true with a regulated
20 too, isn't it?

21 A. Yeah. Yes, sir, that's what I said, any
22 type of utility. A city -- you know, if you live in
23 a city and they incur some expenses, the citizens are
24 gonna pay for it.

25 Q. I heard in -- is there 2,800 public

1 utilities in the state of Missouri?

2 A. What do you mean by public utilities? I
3 don't know -- well, I don't know -- I don't know what
4 that number comes from, but --

5 Q. The number came from Mr. MacEachen.

6 A. Okay. Are you talking about water
7 utilities, water and sewer, all industries?

8 Q. I would assume that he was referring to
9 water and sewer, yes, sir.

10 A. That's probably close but I don't know.
11 I don't know the number.

12 Q. Would you consider that a pretty high
13 number?

14 A. Compared to what?

15 MS. HEINTZ: Your Honor, I'm going to
16 raise a relevance objection to this line of
17 questioning. I'm not quite sure what Mr. Merciel's
18 opinion of the number of utilities in Missouri has to
19 do with the issues that we're here to decide.

20 JUDGE STEARLEY: Mr. Pugh, can you
21 explain to us why you think this is relevant or is
22 going to lead to a relevant question?

23 MR. PUGH: Well, your Honor, I feel that
24 2,800 is a lot of people, and I really have never
25 heard anybody yet that was not happy with public

1 utilities. I'm -- I've -- I've lived under one all
2 my life and --

3 JUDGE STEARLEY: All right, Mr. Pugh,
4 I'm gonna stop you at this point and I'm gonna
5 sustain the objection. I don't believe it is
6 relevant to the issues that are before the Commission
7 at this time.

8 MR. PUGH: Well, basically, that's all
9 the questions I have for Mr. Merciel.

10 JUDGE STEARLEY: All right. Thank you
11 very much. Cross-examination, Ms. Fortney?

12 MS. FORTNEY: I've got a couple
13 questions.

14 CROSS-EXAMINATION BY MS. FORTNEY:

15 Q. Hello, Mr. Merciel.

16 A. Good evening.

17 Q. I have a couple of questions. With
18 regards to 393, how many water and sewer companies
19 are out there that are 393s today?

20 A. Well, I don't know how many are out
21 there. I'm aware of, I think, probably about five of
22 them.

23 Q. And how are --

24 A. There could well be others.

25 Q. And how are they doing or how -- are

1 they operating?

2 A. So far as I know, relatively
3 problem-free. I don't -- I don't -- I don't know of
4 problems, but if they have them, I wouldn't
5 necessarily know about them.

6 Q. Okay. How long have 393s been around?

7 A. I don't know the exact time. A few
8 years, not very -- like three or four years, maybe.
9 Maybe a little more than that. I'd have to -- I
10 don't know. I'd have to look it up in the statute.
11 It would be -- I just don't know the answer off the
12 top of my head.

13 Q. Okay. But there's five out there today.
14 Is that information available that we'd be able to
15 possibly look at or maybe be able to get those
16 contacts or something?

17 A. Well, I could -- I could give you the
18 names of the ones that I know about. I guess he
19 could -- I don't even know how to contact all of
20 them. Some of them I do.

21 Q. Okay.

22 A. I'm sure if you know the name, the
23 information would be available from the Secretary of
24 State. As to locating other 393s, I'm not sure how
25 to go about doing that.

1 Q. Okay. The information is probably
2 available on the web site too once you gave us the
3 names.

4 A. Well, a registered agent would be, yeah.

5 MS. FORTNEY: Okay. I think that's it.

6 JUDGE STEARLEY: Thank you, Ms. Fortney.

7 Cross-examination, OPC?

8 CROSS-EXAMINATION BY MR. MILLS:

9 Q. Good evening, Mr. Merciel.

10 A. Good evening, Mr. Mills.

11 Q. One of the issues in this case is

12 whether the Commission has or should have

13 jurisdiction over the homeowners association. Are

14 you aware of that issue?

15 A. Yes, I am.

16 Q. And what is the Staff's position on that

17 issue?

18 A. Well -- well, my position is I believe

19 the -- I'm sorry. You asked about the association,

20 correct?

21 Q. Yes, the current homeowners association.

22 A. The current homeowners association. My

23 opinion is, the current homeowners association, the

24 way it's set up, should be regulated. That's my best

25 way to phrase the answer, if that satisfies.

1 Q. It may. The question I asked was what
2 is Staff's position? Is that the same as your
3 position?

4 A. Okay. Well, that's my -- that's my
5 position.

6 Q. Is the Staff's position any different?

7 A. Well, not to my knowledge.

8 Q. Okay. And another issue is, assuming
9 the Commission agrees with you on that issue, whether
10 or not the utility should be transferred to the newly
11 formed 393 corporations; are you aware of that issue?

12 A. Yes, I am.

13 Q. And what is the Staff's position on that
14 issue?

15 A. Well, I don't personally have a position
16 and I'm not sure if the Staff itself has a position.
17 I'd have to consult counsel. I don't -- I don't know
18 what our position is on that. You're asking --
19 you're asking whether the Commission actually has to
20 approve this transfer?

21 Q. No, no. My -- have you seen the issues
22 listed in this case?

23 A. Yes.

24 Q. Okay. It's my understanding -- and you
25 can correct me if your understanding is different --

1 that one of the issues is if the Commission
2 determines that it does have jurisdiction over the
3 homeowners association, whether it should allow the
4 homeowners association in Folsom Ridge to transfer
5 the utility to the 393 corporations. Is that your
6 understanding of one of the issues in this case?

7 A. Okay. As I say, that's more of a legal
8 issue. I haven't put a lot of thought into it.
9 If -- if the issue is if -- if the Commission has
10 jurisdiction over the -- I guess -- I think more from
11 a technical standpoint, you know, my -- my thinking
12 is, you know, the homeowners association as it is
13 should be regulated. I think it's another question
14 should the Commission go ahead and exert jurisdiction
15 over it. And if the answer to that is yes, then
16 perhaps they should -- they should actively approve
17 this transfer as opposed to simply dropping all this
18 and allow the 393 to, you know, take off on its own.

19 Q. Okay. Well, let me ask this a different
20 way: From your perspective -- and maybe Staff's is
21 different and you can tell me that -- but from your
22 perspective, what is the desired end result out of
23 this case?

24 A. Well, the desired end result is -- I
25 guess I'll put it in two scenarios, either to allow

1 this 393 to be set up and acquire the facilities and
2 go on, or if there's some reason that the Commission
3 feels that should not happen, to stop the transfer
4 and not allow the 393 to go ahead.

5 Q. Okay. And has -- has the Staff provided
6 the Commission any guidance on whether or not it
7 should stop that transfer?

8 A. I believe our guidance might be the
9 technical issues. If the Commission believes that --
10 that the 393 should not take over these facilities
11 without -- without it, the Commission being involved
12 somehow, that would be a tool for them to stop it if
13 they see fit.

14 Q. Now, you've been -- you've been with the
15 Commission Staff and the water and sewer department,
16 and I believe this is your 30th year?

17 A. That is correct.

18 Q. Congratulations.

19 A. Thank you.

20 Q. You've been involved in a lot of
21 transfer cases having to do with water and sewer
22 companies; is that correct?

23 A. Yes.

24 Q. Is it fairly common for the Staff to
25 recommend that the Commission impose conditions in

1 approving a new transfer?

2 A. I don't know that I would say it's real
3 common. We -- we have. We certainly have before.

4 Q. You're familiar with cases in which
5 Staff has taken the position that conditions should
6 be imposed --

7 A. Yes.

8 Q. -- before a transfer takes place?

9 A. Now, of course, these really, in almost
10 all cases, involve the utilities that were already
11 regulated as opposed to one where we're asking
12 whether -- whether the Commission should exert
13 jurisdiction, so the starting point might be a little
14 bit different.

15 Q. Perhaps. For the purpose of my next
16 question, assume with me that the Commission has
17 determined that it does have jurisdiction over the
18 homeowners association.

19 A. Okay.

20 Q. Okay. Also assume with me that the
21 Commission believes that the homeowners association
22 cannot transfer its assets to the 393s without
23 Commission approval.

24 A. Okay.

25 Q. Okay. You've got those two assumptions?

1 A. Uh-huh.

2 Q. Under that hypothetical scenario, would
3 the Staff suggest to the Commission that conditions
4 ought to be imposed on that transfer?

5 A. My suggestion would be to address the
6 technical issues somehow, and the answer might be on
7 any particular one that we don't believe this is
8 necessary for us to do this, the idea being that --
9 that the Commission could be assured that this --
10 this system's gonna get transferred relatively --
11 with -- well, I won't say problem-free, but with
12 problems at least being addressed on how they're
13 gonna be handled.

14 Q. And as the system stands today, what are
15 some of those problems?

16 A. Well, that's what's addressed in here,
17 and I don't know about the currency of all of them.
18 You know, a lot of them have been addressed, I
19 believe. And Mr. MacEachen testified that -- and I
20 learned today that Department of Natural Resources
21 has not inspected their -- on their settlement
22 agreement. They had some issues there. I -- I had
23 the impression that was all -- pretty well all
24 finished, but he testified otherwise. So it seems
25 like that would be a reasonable thing to finalize

1 before a transfer is approved.

2 Q. Okay. How about some of the other
3 issues that are raised in your testimony, technical
4 issues?

5 A. Well, let's see. Should we just go
6 through them or --

7 Q. Sure.

8 A. Okay.

9 Q. And just so the record's clear, you're
10 gonna be talking about Mr. Hummel's testimony that's
11 attached to your testimony beginning on page 4,
12 line 16?

13 A. That's correct.

14 Q. Okay.

15 A. Okay. Actually, we're starting at the
16 bullet points, and the first one is on line 20.

17 Q. Okay.

18 A. And I'm not gonna read the whole thing,
19 but it's talking about service lines and where the
20 point of delivery is, basically who is responsible
21 for what, at what point does the utility cease its
22 maintenance and the customer picks it up. And that
23 is still one of the things that's being developed in
24 the 393's bylaws.

25 Frankly, I have ideas on -- on how that

1 should be handled which is the way we do it with most
2 of the regulated utilities. It looks like that's the
3 direction the 393 is going. They could do something
4 different. That's where this flexibility comes up.
5 They don't really have to do it, you know, the way I
6 say so necessarily.

7 Q. And is the issue raised here because
8 that's an issue with the way that the system is
9 currently configured, or because it may be an issue
10 if the system is operated by a 393 corporation?

11 A. Well, it's -- it's -- it's an issue that
12 whoever the utility is ought to have a -- they ought
13 to have some direction on what they're gonna do.
14 Now, of course, this was written for the -- you know,
15 for the regulated utility, but it applies to the 393,
16 and it's just something that we didn't think was
17 handled or at least finalized and something that we
18 would like to see done, you know, as a -- on a
19 going-forward basis.

20 Q. And I think you testified earlier that
21 some of these -- some of these technical issues
22 addressed all of them -- and we may find that out as
23 we go through -- apply regardless of who ends up
24 operating the system; is that true?

25 A. That's true.

1 Q. Is this one of those issues that is an
2 issue regardless of who was operating the system?

3 A. Well, I think so.

4 Q. Okay.

5 A. Yes, I do think so.

6 Q. Okay. Thank you.

7 A. Okay. The next one is "Produce as-built
8 drawings." That's so that whoever is operating the
9 utility knows -- knows what is in the ground and
10 where it is. And as far as a current situation --
11 and informally I was talking to Mr. Krehbiel, the
12 engineer, and it's my understanding that that's in
13 the process of being done. There are some drawings
14 being prepared. Of course, with some systems, once
15 it's in the ground, if you don't -- you know,
16 sometimes you don't know where everything is. It
17 might not be possible to have 100 percent accuracy,
18 but I believe this is being worked on from what I'm
19 being told.

20 Q. Okay. And is this another one of those
21 issues that would be an issue regardless of who runs
22 the system?

23 A. Well, again, I believe it is.

24 Q. Okay.

25 A. Now, we would be more sticklers -- if

1 we're gonna regulate this company, we would want to
2 insist that they -- they know where things are.
3 That's something on the 393. I would recommend that
4 the 393 knows, has the same knowledge.

5 Q. Okay. And why is that? Why is that
6 important?

7 A. It's for customer service so you can get
8 to things if you have a main break so you -- you
9 know, you know where you're going, and if you're --
10 if you're -- in this case water and sewer, some of
11 them are nearby. You want to be going to the right
12 one and know where the other one is relative to other
13 things like electric lines.

14 Q. So this is an important thing for any
15 type of a utility; regardless of what regulatory
16 structure or nonregulatory structure, it's important
17 for it to have this information?

18 A. Absolutely. It's good operations.

19 Q. Now, I think you said if it were a
20 regulated utility, you would be more of a stickler.
21 Explain that to me.

22 A. Well, again, it's a jurisdictional
23 issue. If, you know, there's -- there's homeowners
24 associations and maybe even water districts and
25 cities that, you know, don't really pay a lot of

1 attention to this. I think they should but maybe
2 they don't, and that's not my business. But our
3 regulated companies, we do our best to -- and I'm not
4 saying all of them have it either. There are certain
5 companies that -- that, you know, don't know as much
6 about their system as we wish they did.

7 Q. But the PSC Staff as a regulator tries
8 to insist and tries to ensure that regulated
9 companies do have this information?

10 A. Exactly. We push it, yes.

11 Q. Okay. From your point of view, would it
12 be detrimental to the public interest to allow a
13 company to operate without this information?

14 A. Well, that's --

15 Q. Detrimental with respect to having it.

16 A. That's one of those things. It -- it --
17 it's awful easy to answer yes, you know, on -- just
18 on the basis that we --

19 Q. Go right ahead.

20 A. Well, on the basis that any utility
21 operator, you know, should have -- should have this
22 knowledge. Now, again, from a practical standpoint,
23 real world, there are a lot of them who don't have
24 and they might get by just fine, but that doesn't --
25 that doesn't mean it's right. So I think it's

1 important. If they don't, it's not necessarily the
2 end of the world.

3 Q. Okay. A while ago I asked you some
4 questions about if the Commission believed it were in
5 the position to impose conditions on the transfer of
6 the 393, what conditions would those be. Would this
7 condition be one of those conditions?

8 A. Well, I would like to see all of these
9 addressed.

10 Q. All of -- all of which?

11 A. All of -- all of these bullet points.

12 Q. Are you talking about the ones that were
13 filed or the ones that were offered into evidence?

14 A. Well --

15 Q. Seriously --

16 A. Okay.

17 Q. -- I think -- you have 30 years'
18 experience. I think the Commission would like to
19 hear from you which of the issues are important, and
20 certainly from the public's point of view, I want to
21 hear from you which of the issues are important.

22 A. Yeah. Well, my answer is the ones that
23 were filed. I understand, you know, some were
24 excluded and I understand the reasons for that.

25 Q. Good, because I'm not sure I do.

1 A. Okay.

2 Q. Can you explain those reasons for me?
3 Why were those excluded?

4 A. Okay. We're talking about the valves
5 again, correct?

6 Q. Well, yes. I'm talking about the
7 shut-off valves that we --

8 A. Okay.

9 Q. -- that I believe, and perhaps you do as
10 well, are important. Why -- why were those excluded?

11 MS. HEINTZ: Your Honor, I think we've
12 had objections on this issue. We have -- I have
13 agreed to redact this testimony to please Mr. Mills,
14 and I don't think it's fair to Mr. Merciel to put him
15 on the spot like this.

16 MR. MILLS: For the record, I never
17 objected to this testimony. I think it's important
18 testimony. I think this is a crucial issue that
19 ought to be in the record. I objected to Staff
20 counsel calling this issue irrelevant yesterday when
21 they were going to offer the same testimony today.

22 I think that's -- I think that's a
23 violation of the -- the pro se complainants' due
24 process. They were precluded from asking questions
25 about this very issue that we all knew Staff was

1 gonna offer testimony on.

2 JUDGE STEARLEY: I'm not sure that in
3 the context that the discussion was happening
4 yesterday that's a correct characterization,
5 Mr. Mills.

6 MS. HEINTZ: I would agree with you
7 there, your Honor.

8 JUDGE STEARLEY: And -- and I don't
9 believe you can ask -- if I heard your question
10 correctly, that you can ask Mr. Merciel why it was
11 excluded, and I'm not sure what your question was
12 there. I may have misheard you, but -- between
13 exchanges here.

14 MR. MILLS: This is sworn testimony that
15 Mr. Merciel offered.

16 JUDGE STEARLEY: Right.

17 MR. MILLS: He just testified under oath
18 that he believes this is an important point. I'm
19 trying to understand from his perspective as a
20 witness why this important point that he filed in his
21 testimony is not being offered by the Staff, and I
22 think that's a fair question.

23 MS. HEINTZ: I will fall on my own sword
24 here and say that I objected -- maybe my objection
25 was out of line yesterday. I apologize if I made an

1 erroneous objection, but I still think that it's not
2 fair to ask the witness to explain my actions.

3 JUDGE STEARLEY: I -- I agree with that.
4 I don't believe that is in Mr. Merciel's purview to
5 do, and I will sustain any objection to directing a
6 question in that regard to Mr. Merciel.

7 MR. MILLS: Okay. So will I be allowed
8 to ask him whether or not he feels that the
9 installation of shutoff valves at water service and
10 sewer service connections is an important safety
11 feature?

12 JUDGE STEARLEY: You can -- you can ask
13 that subject to any relevant objections I get from
14 the other parties, understanding that your question
15 may be in a completely different context in which the
16 question was asked yesterday by a different party,
17 may receive a very different ruling today.

18 MR. MILLS: Okay. Thank you.

19 MR. COMLEY: May I try to shorten things
20 up, your Honor? I just visited with my client about
21 this, and with respect to the redacted version of
22 Mr. Merciel's testimony that regards utility-owned
23 shutoff valves, we are prepared to stipulate that if
24 the application for transfer is approved, we would
25 accept conditions that all utility-owned shut-off

1 valves should be installed for each sewer and water
2 service connection, and we will stipulate that we
3 will agree to a condition that all valves must be
4 shown on plans and the valve itself in the field
5 marked clearly as either water or sewer. We are
6 prepared to do that as a condition on the transfer of
7 the assets.

8 JUDGE STEARLEY: Okay. Assuming we have
9 jurisdiction to rule on that issue.

10 MR. COMLEY: Presuming that that goes
11 that direction, yes.

12 JUDGE STEARLEY: All right. Does that
13 satisfy your concerns with this line of questioning,
14 Mr. Mills?

15 MR. MILLS: It more than satisfies me;
16 it makes me very happy, and I'm done now.

17 JUDGE STEARLEY: Thank you, Mr. Mills.
18 Cross-examination from the 393 companies?

19 MS. HOLSTEAD: No cross, your Honor.

20 JUDGE STEARLEY: Cross-examination from
21 Folsom Ridge and the association, Mr. Comley?

22 CROSS-EXAMINATION BY MR. COMLEY:

23 Q. Mr. Merciel, I think I have some
24 questions as well regarding -- about the technical
25 issues you've identified through Mr. Hummel's

1 testimony.

2 A. Okay.

3 Q. And for clarification -- and I know
4 Mr. Mills has focused on a few of those, but I wanted
5 to go through them as well. Regarding your first
6 bullet point on page 4, would it be fair to say that
7 many of the subjects -- the topics there in the
8 bullet point could be addressed in the bylaws of the
9 company?

10 A. Yes, and I believe that it is being
11 developed that way.

12 Q. And those -- the bylaws that you have
13 reviewed and I think the bylaws that have been marked
14 as exhibits today would reflect some effort toward
15 making accurate definitions of the various topics
16 you've described in the bullet point?

17 A. Yes. There may be some updates to what
18 was -- I'm not sure what was offered today if that
19 was what was filed -- let's see. Well, I'm not --
20 I'm not sure what was offered today. I have not seen
21 that.

22 Q. You have not seen any?

23 A. Right, uh-huh.

24 Q. But that would be something that the 393
25 companies could have in a proposed set of bylaws or

1 an adopted set of bylaws that you would approve?

2 A. Yes.

3 Q. Or --

4 A. But it is -- and I will say based on
5 informal discussions, it appears that that is being
6 done.

7 Q. Third bullet point, you mentioned,
8 "There will be leaks on both systems, water and
9 sewer, both of which are under pressure." In that
10 respect would you -- you expect the company to have
11 water-pressure-reading equipment, pressure gauges,
12 say, for instance, at the well head; would that be
13 one of these concerns?

14 A. Well, that would be one way, yes.

15 Q. Would another way mean to have the
16 operator -- the certified operator tell you or tell
17 the Commission that part of the standing operating
18 procedure for all operators is to have a hand-held
19 pressure gauge that could be used on a random or
20 as-needed basis?

21 A. Yes. I might add --

22 Q. Go ahead.

23 A. What I was gonna say on the sewer
24 system, frankly, I'm not sure how convenient it is to
25 check pressure on the sewer system, but same thing

1 applies because this pressure system operates much
2 like a water distribution system.

3 Q. And I notice that you say "should be
4 considered."

5 A. Yes.

6 Q. It's not something that you would
7 require, it's something to be reconsidered?

8 A. Yeah, there ought to be -- it would be
9 good to have some way to do it, yeah.

10 Q. Respecting flow measurement, that would
11 be something that would -- would be able to measure
12 the flow out of the treatment facility?

13 A. Yes, that's correct.

14 Q. Some sort of a -- some sort of a meter?

15 A. Yes, that's correct. Not having that is
16 kind of like driving your car without a speedometer;
17 you can do it, it's just not -- not as well.

18 Q. Okay. All right. Respecting your
19 recommendation about water meters, would the Staff's
20 recommendation on that be that water meters be
21 installed immediately, or would there be a
22 recommendation that a water meter installation
23 program be implemented, say, on a four- to five-year
24 basis or some sort of a basis like that?

25 A. My opinion is a program like you just

1 described would -- would suffice.

2 Q. Do you have a time in mind for that to
3 be done?

4 A. Not -- not really. What you suggested
5 is -- you know, is workable. You know, a few years.

6 Q. My understanding right now there's
7 around 48 to 49 water customers. We're talking about
8 36 to 48 months to get that fully implemented and
9 retrofitted.

10 A. Right.

11 Q. And then for new customers that would be
12 immediate?

13 A. Right, you would do it on a -- on all
14 new connections.

15 Q. All right. Regarding the water main
16 repair procedure, if that were in writing at this
17 time and certified by the contract operator, would
18 that be advancing toward meeting the objective you
19 have in the bullet point about establishing that
20 procedure?

21 A. I -- I think it would. I will say one
22 concern about this system is some water systems the
23 customers can detect a decrease in pressure as the
24 system is going down. This particular system, I
25 think what would happen since the tank is on a --

1 pretty much on a hill, I think they might kind of
2 suddenly run out of water. The tank -- the tank
3 would -- would drain and there would be some
4 difference in pressure, but it would be -- you know,
5 if you have a difference of, say, 110 pounds down to
6 95, it's a decrease but it's not something you would
7 really notice.

8 Q. Would the extra storage capacity
9 proposed for this system be a factor in how that
10 water main repair procedure would be developed?

11 A. Well -- well, when we're talking about
12 draining the system, if you have a main break and if
13 nobody sees the main break, the idea is to get out
14 there before you're out of water. I think you'd need
15 an alarm on the tank --

16 Q. I see.

17 A. -- either a -- some kind of an audible
18 alarm or -- it's nice to have a dial-in system, but
19 this is such a small system, that would be rather
20 costly until you have some more customers.

21 Q. So you're proposing to have some sort of
22 an audible or electronic alarm?

23 A. Right. If you just put a bell on it,
24 you know, to where somebody could hear it and then --
25 and then call the operator, that's -- that's helpful.

1 Now, I think this is also talking about the
2 procedure, and Mr. McDuffey was testifying to it, you
3 know, what -- what happens when -- when there is a
4 break, you know. You get a call and, you know, who
5 gets it, how do they come out and things like that.

6 Q. The next one is, "All sewer customers
7 must have a septic tank and an effluent pump." If
8 you were to receive the -- a rules and regulations in
9 the bylaws of the 393 that set out a rule to that
10 effect and set out the identity of the responsible
11 party for installation and maintenance of that
12 device, would that be getting toward meeting the
13 objective on this one?

14 A. Yes, it would.

15 Q. Regarding the written tapping procedure
16 to be provided to plumbers, is this condition acting
17 toward the issues that have been raised about perhaps
18 having water and sewer service lines in the same
19 meter box?

20 A. That -- yes, that's certainly part of
21 it. The other thing is I've seen -- I've seen cases
22 where -- where a -- you know, a plumber or contractor
23 comes out and I've seen them shut down a whole water
24 system without noticing the owner so that he can, you
25 know, make a tap. And obviously, everybody's out of

1 water, and you don't want that to happen.

2 Q. So --

3 A. So there should be a procedure to
4 where -- to where, you know, there's -- there's, you
5 know, some kind of application and, you know, if --
6 if the system or a portion of the system needs to be
7 shut down, at least there's a -- you know, some kind
8 of plan or notification on, you know, getting that
9 done as opposed to just somebody going out and doing
10 something that's gonna have a negative effect.

11 Q. Presuming Mr. McDuffey will be the
12 contract operator for the 393 companies, is that
13 something that through his office as provided in the
14 bylaws, applications can be submitted for his review
15 and approval, and his staff then go out and approve
16 and inspect taps and those sort of things to the
17 mains and also the service extensions?

18 A. I think that would suffice. I would
19 think Mr. McDuffey would be able to administer
20 something like this.

21 Q. "Evaluate the location and installation
22 of the water service connections, water service
23 lines, service sewers and a determination made on a
24 case-by-case basis whether a specific improvement/
25 separation should be implemented."

1 You're gonna have to describe for me
2 what you would have in mind on addressing that bullet
3 point.

4 A. Well, it's -- to a great extent it's
5 part of the mapping, you know, where is everything.

6 Q. All right. As-built drawing's the issue
7 again?

8 A. Yeah, as-builts. It's -- it's that,
9 and, you know, if there's some obvious problem, you
10 know, if you have a water and a sewer -- I'll say a
11 water main and a collecting sewer, you know, side by
12 side along the road and both the taps are right
13 there, do you really want them leading right there to
14 the same place. I don't know -- I don't know if that
15 situation exists or not, but the idea is you look and
16 see what's out there and see if there are any
17 potential problems like that.

18 Q. I have another question about your --
19 you have visited the site of the system, have you?

20 A. I have been there once.

21 Q. Have you -- has Mr. Hummel been there?

22 A. Mr. Hummel's been there probably several
23 times.

24 Q. I'm going to ask you whether the Staff
25 made an analysis of the -- the systems themselves,

1 the nature of the service provided and if you did see
2 anything that was unsafe?

3 A. Well, Mr. Hummel has been -- has been in
4 the well house, I have not. I think he's walked on
5 the premises of the treatment plant. I have not done
6 that. But to my knowledge, there isn't any existing
7 condition that's of an imminent safety matter.

8 Q. I notice that there is no other bullet
9 point concerning a condition regarding remediation of
10 any unsafe feature that you saw.

11 A. Right. I can't tell you that there's
12 something that needs to be built -- you know, that
13 somebody needs to go fix tomorrow or anything like
14 that.

15 Q. I have a question about maintenance fees
16 and availability fees. You are aware, aren't you,
17 that the association charges a fee for people who are
18 not connected to the system even though the system is
19 nearby them?

20 A. Yes, I believe I do remember seeing
21 that.

22 Q. Now, are availability fees like this
23 charged by other regulated public utilities?

24 A. There are two presently that have
25 availability charge -- well -- well, there are two

1 that in some fashion have an availability charge.

2 Q. And are these tariffed?

3 A. One is, one is not.

4 Q. With respect to the one that is not, do
5 you know how long that company has charged
6 availability fees?

7 A. Since -- yeah, I've looked it up. I
8 think it's 1972.

9 Q. And has that company been in for rate
10 relief since 1972?

11 A. Yes.

12 Q. Has the Staff taken any stand on the
13 tariffing of those availability fees?

14 A. Not since the certificate case in '72.

15 Q. Would it be safe to say that the Staff
16 has not recommended for that company that those
17 availability fees be tariffed? And I know '72's
18 before your time.

19 A. Yeah. Can you ask the question again
20 the way you asked it?

21 Q. Isn't it true that the Staff has not
22 recommended that those fees be tariffed by the
23 company that is charging them?

24 A. Okay. That would be true. Since the
25 certificate case --

1 Q. Since the certificate case.

2 A. Right.

3 Q. Isn't it true that availability fees are
4 not necessarily for a public utility service?

5 A. Well, the ones that I'm familiar with
6 are for the -- for the utility service. The revenue
7 is used to operate the utility.

8 Q. Even though the revenue is used for the
9 utility, is the rate charged for a specified utility
10 service?

11 A. Oh, well, no. It's -- it's -- no, it's
12 not for a service. It applies if the service is
13 there but you're not taking it.

14 Q. If I read your testimony correctly,
15 there are two companies that are collecting
16 availability fees that you know of?

17 A. Yeah. I need to change my answer. I
18 think there are three companies. Two of them are
19 operated by the same people.

20 Q. And --

21 A. I can name names if you want to get into
22 that, but maybe not.

23 Q. Those two companies -- those two
24 companies are not charging -- are not tariffing; is
25 that correct?

1 A. Correct. Correct.

2 Q. And with respect to both those
3 companies, they have been in for rate relief since
4 their certificate case and the Staff has not
5 recommended that those charges be tariffed?

6 A. That's correct. The revenue is -- it's
7 there, it's used for the rate calculations, but with
8 the exception of the certificate case, the Staff has
9 not recommended them to go in the tariff yet.

10 Q. With respect to the 393 companies, would
11 it be your testimony that the situation in Big Island
12 deserves to have some solution to the governance of
13 the water and sewer systems?

14 A. Yes.

15 Q. And would you agree that there should be
16 some central governing entity for the systems so that
17 they can administer connections, disconnections and
18 enforcements of their rules?

19 A. Yes, by -- by govern -- governance
20 means, some -- just some entity to --

21 Q. Exactly.

22 A. Okay.

23 Q. Is that your testimony?

24 A. The answer is yes.

25 Q. Now, regarding the treatment of the

1 developer, do you know what the bylaws -- let's see.
2 Do you know what the application in the agreement set
3 out for how the developer would be treated following
4 the transfer of assets? And did you review that?

5 A. In the bylaws? Yes, I did. If you're
6 talking about further extensions and expansions, is
7 that --

8 Q. Yes.

9 A. Yes, I did.

10 Q. And isn't it true that the developer is
11 going to be responsible pursuant to that agreement
12 for the cost of any extensions or improvements to
13 either system?

14 A. Yes, that's the way I read them.

15 Q. Also with respect to the voting rights
16 of the 393, the objection, as I understand the Staff
17 had, was the one-vote/one-lot rule in the
18 association. Does the 393 company's one vote per
19 customer, in your estimation, satisfy that concern?

20 A. It does. That's the way I read them,
21 and yes, it is satisfactory in my opinion.

22 MR. COMLEY: That's the conclusion of my
23 cross, thank you.

24 JUDGE STEARLEY: Thank you, Mr. Comley.
25 Any redirect from Staff?

1 MS. HEINTZ: No, thank you, your Honor.

2 JUDGE STEARLEY: All right.

3 Mr. Merciel?

4 MS. HEINTZ: Has Ms. Holstead waived
5 cross?

6 MS. HOLSTEAD: I waived.

7 JUDGE STEARLEY: Yes, she did.

8 MS. HEINTZ: All right.

9 JUDGE STEARLEY: Mr. Merciel, I'd like
10 to thank you also today for your patience for waiting
11 to testify and for your testimony. You may step down
12 from the stand, although I'm not finally excusing you
13 at this time. I imagine it's going to come shortly.

14 THE WITNESS: Yes, sir, I understand.

15 JUDGE STEARLEY: All right. Thank you
16 very much. At this time I propose we take about a
17 15-minute break, and when we return we will pick up
18 with closing arguments. My proposal is that they
19 would be offered in the same order in which opening
20 statements came in. And that invitation doesn't have
21 to be accepted by all the parties if they don't wish
22 to give a closing argument, after which time we will
23 go over just some housekeeping matters in terms of
24 setting briefing schedules, checking our exhibits
25 list and a couple other little matters post hearing.

1 MR. COMLEY: Your Honor, I do have
2 another matter to take up.

3 JUDGE STEARLEY: All right. Do you want
4 to -- do you want to wait until we're back or --

5 MR. COMLEY: Yeah, I'll do that when we
6 come back.

7 JUDGE STEARLEY: All right. Very well.

8 (A RECESS WAS TAKEN.)

9 JUDGE STEARLEY: All right. We are back
10 on the record and just before we went off the record,
11 Mr. Comley brought up, I believe, we had a procedural
12 matter to address. Did you want to do that before
13 closing arguments or did you want to wait?

14 MR. COMLEY: Yes, sir, I think it would
15 be something to do before the closings. Commissioner
16 Gaw subpoenaed Mr. MacEachen today, and during the
17 course of the testimony, there was a substantial
18 amount of testimony about the service lines, their
19 installation and the components of the materials used
20 in those service lines.

21 Because of the extent of that and
22 because that subject had not been addressed in full
23 by Folsom Ridge or the association in its own written
24 testimony, I'm going to ask the Commission for leave
25 to present either a live witness or perhaps, with

1 consent of the parties, other written testimony from
2 a witness who has direct knowledge about the
3 installation of the service lines, the components of
4 those materials, as well as the bedding.

5 And his name is Kenneth Carol. He is
6 the construction -- he was the construction
7 contractor on most of these installations. And I
8 think that would put a number of issues to rest or at
9 least be able to give more information on the quality
10 of the construction.

11 JUDGE STEARLEY: And I find that to be
12 quite a reasonable request because we were looking at
13 pictures where we couldn't identify items as like was
14 noted, manufacturer, so there was a lot of
15 assumptions being made. So I believe that would be
16 pertinent since that material was brought into this
17 case that you have an opportunity to file
18 supplemental testimony from another witness to
19 address that.

20 MS. FORTNEY: Would we be able to do
21 rebuttal?

22 MR. COMLEY: And I would -- if parties
23 want to do rebuttal of that testimony, I think a
24 round of rebuttal would not be objectionable. I'm
25 trying to figure out a way of making it an easy

1 procedure so we don't delay the outcome of the case
2 any longer than we have to.

3 And with that in mind, if leave is going
4 to be granted, let me suggest that I visit with the
5 parties about a reasonable way of trying to do this.
6 If we can't come up with a proposal to the -- to you,
7 then we'll have to propose one separately.

8 JUDGE STEARLEY: That would be fine,
9 Mr. Comley. I think we can figure out a reasonable
10 way that we can address those issues.

11 All right. And having addressed that as
12 best we can, at this point in time, I would like to
13 move on to any closing arguments, and I said we would
14 go in the same order as opening statements. So that
15 would start with Folsom Ridge and the association,
16 Mr. Comley. And of course, any party is free to
17 waive if they don't wish to make a closing argument
18 or statement.

19 MR. COMLEY: Your Honor, we're prepared
20 to waive our oral closing in favor of our written
21 brief and the findings and conclusions and proposed
22 report and order that you may be requiring of us.

23 JUDGE STEARLEY: All right. That's
24 quite acceptable. We will get to the housekeeping on
25 the briefs here momentarily. And I will make that

1 same offer to Staff and if they would like to make a
2 closing argument or statement.

3 MS. HEINTZ: Staff waives closing, your
4 Honor.

5 JUDGE STEARLEY: Thank you, Ms. Heintz.
6 Office of Public Counsel?

7 MR. MILLS: Your Honor, I would like to
8 waive closing and do a brief instead. Unfortunately,
9 I believe I'm going to be in hearing for five
10 straight weeks with the -- and so it depends a little
11 bit on the timing of the briefs which I opt for.

12 JUDGE STEARLEY: My understanding is --
13 from the 393 companies from Ms. Holstead today that
14 you're willing to extend the time here, so I believe
15 we can come up with a briefing schedule that would
16 accommodate all the parties.

17 MR. MILLS: Then I would -- I would
18 prefer to write a brief rather than try to construct
19 an oral argument here today.

20 JUDGE STEARLEY: Okay. I believe -- and
21 we will get to the timing on that, but I do believe
22 that we can do that. I'm trying to -- the reason I'm
23 offering actually both alternatives is what I'm
24 giving the parties, is to make sure that pro se
25 complainants get a full and fair opportunity to not

1 only make their closing arguments by statement, but
2 also I know the struggle that goes with preparing
3 legal documents, that you get the opportunity to do
4 both.

5 So with that, I will go to the 393
6 companies. Would you like to make a closing
7 argument?

8 MS. HOLSTEAD: Your Honor, we will waive
9 the right for closing argument and reserve the right
10 to file a brief.

11 JUDGE STEARLEY: Very well. And then
12 that brings us to Ms. Orlor.

13 MS. ORLER: Pardon my inexperience with
14 this, but is the formatting for a brief similar to
15 what we've been filing in pleadings?

16 MR. COMLEY: Yes. Well --

17 JUDGE STEARLEY: Well, no. And we
18 actually have specific guidelines for briefs in our
19 rules, and when I issue the order setting the
20 briefing schedule, I will refer to those guidelines,
21 and that should give you some guidance with that.

22 MS. FORTNEY: He said we could do one,
23 and so between the three of us I think we could --

24 JUDGE STEARLEY: Right. That would be
25 my recommendation for the complainants. I don't want

1 to restrict anybody's opportunities, but I think it
2 would serve you best to file one single brief. And
3 I'm also gonna tell you about the proposed Findings
4 of Fact and Conclusions of Law.

5 You could all collaborate on that. I
6 would expect all of your signatures to accompany
7 that.

8 MS. ORLER: That's fine. Thank you,
9 your Honor.

10 JUDGE STEARLEY: Is that acceptable?

11 MS. ORLER: Thank you for the
12 clarification.

13 JUDGE STEARLEY: Okay.

14 MS. ORLER: And I'll waive closing.
15 Thank you.

16 JUDGE STEARLEY: Okay. Well, Mr. Pugh,
17 you have an opportunity now if you would like to make
18 some closing remarks to the Commission.

19 MR. PUGH: Now?

20 JUDGE STEARLEY: Yes, sir.

21 MS. FORTNEY: I could go first if you'll
22 allow that.

23 MR. PUGH: It will take about one
24 sentence, your Honor.

25 JUDGE STEARLEY: As long as there's no

1 profanity involved in that one sentence.

2 MR. PUGH: Well, I won't do that.

3 JUDGE STEARLEY: All right. You may --
4 you may come to the podium, Ms. Fortney.

5 MS. FORTNEY: Don't laugh or anything.
6 I've never done this before. Okay. In my closing
7 I'm addressing the eight to ten issues that were put
8 before us today, so that's how I put this to order.

9 JUDGE STEARLEY: Okay. Could you please
10 get a little closer to the microphone for me, or
11 stretch it towards you as much as possible?

12 MS. FORTNEY: Is that better?

13 JUDGE STEARLEY: Yes, thank you.

14 MS. FORTNEY: In closing I believe that the
15 water and sewer utilities should have been regulated
16 from day one because we wouldn't be here today. There
17 are so many issues from membership to installation and
18 operation that need to be resolved that regulation is
19 in the best interest of Big Island residents. I
20 believe that the utilities within the intendance of
21 Section 386.020 -- I'm not trying to be -- I don't
22 want -- I'm not an expert on these, but I'm just taking
23 this from the issues and what the definitions are.

24 JUDGE STEARLEY: That's quite all right.

25 MS. FORTNEY: So -- but I do believe

1 that the utility is within the intendance of 386.020
2 for gain. And this is because they're billing and
3 receiving monies for service and then some, people
4 that don't -- aren't getting service but they're
5 billing and they're paying.

6 Plus, I interpret gain in a different
7 way, and that is that because the water and sewer
8 utility is there, and since they put it in, then
9 their property has also doubled or tripled in value.
10 So I see that as also a gain to them.

11 So let's see. So I think they should --
12 they should -- having been regulated, they should be
13 regulated until at least all the issues are resolved.
14 And when we talk about issues, some of them are the
15 ones that -- the technical issues, but I think
16 there's also issues before that would be transferred
17 to like a 393, and that would be issues with bylaws.

18 Okay. There are so many issues that
19 need to be resolved that it's not feasible to allow
20 the transfer of assets to the 393 companies at this
21 time. The assets should only be transferred when and
22 if all issues are resolved. Then there needs to be
23 an assurance/consequence that the 393 companies can
24 and will continue the stable water and sewer utility
25 at that time.

1 I do believe that Folsom Ridge has
2 failed to provide safe and adequate water and sewer
3 service in violation of Section 393.130 over the past
4 eight to nine years. And I believe the testimony of
5 several different people prove this by not only the
6 pictures, but the testimony, the DNR violations. I
7 think when all that's looked at, I think they've been
8 in violation.

9 Let's see. Also due to the fact that
10 the water and sewer lines were installed in the same
11 trench, there's been wastewater leaks, and I'm
12 talking about the one that I know of specifically is
13 the Stoyer Springs.

14 The other issues were, has Folsom Ridge
15 discriminated against some with rates and charges for
16 the taps? With rates again, people that are being
17 billed that are not getting service, I don't think
18 they should have to pay. So I think, yes, they are
19 being discriminated against.

20 And the charges for the taps, according
21 to the testimony of -- that was in Jim Merciel's
22 testimony with the CIAC, I do believe that we were
23 probably overcharged on the taps.

24 What conditions should be imposed for
25 the -- if the asset transfer takes place? Again, I

1 think at least those issues are brought up to date
2 with Jim Merciel and his testimony, and then I think
3 there's other issues with the bylaws. I think there
4 should be a warranty on the system that was talked
5 about in the testimonies and a bond that might go
6 with that. So -- and that's it.

7 JUDGE STEARLEY: Thank you very much,
8 Ms. Fortney. Mr. Pugh, would you like to make some
9 closing remarks? And again, you don't have to bother
10 phrasing these as questions now.

11 MR. PUGH: That's the only reason I'm
12 here.

13 MS. ORLER: Just when he got the hang of
14 questions.

15 MR. PUGH: I had no idea five minutes
16 ago that I was going to be doing composing. I did
17 get a little bit wrote out here. There is no
18 question in my mind that the HOA has been operating
19 as an unlicensed public utility. Therefore, I feel
20 like the nine complainants were right in going to the
21 Public Service Commission for some help. We had two
22 choices: We could -- we could sue them legally,
23 which we couldn't afford, or we could go to the
24 Missouri Public Service Commission.

25 I believe everybody on Big Island was

1 aware that there was a problem because others
2 organized -- others organized the meeting to hire an
3 attorney who was a very reputable attorney,
4 especially in matters such as this, Mr. Bob Pohl. At
5 this meeting, there was a pretty good turnout for Big
6 Island which is not saying a heck of a lot, but
7 Mr. Pohl talked to us about going to Folsom Ridge and
8 negotiating to develop another -- I was under the
9 impression it was to develop another HOA a little
10 more satisfactory and suitable to the homeowners that
11 wasn't run -- operated -- that wasn't operated by the
12 developers.

13 That meeting became, I felt like, very
14 enthusiastic, and I was one of them. Now, back in --
15 the first time I was -- that I was aware that I was
16 going to be required to be a member of a homeowners
17 association was in April of 2000. The covenants that
18 Mr. Golden gave us, I thought they were very -- very
19 much in favor for the developers and left a lot to be
20 desired for the homeowners.

21 And unfortunately, I was asked to be on
22 that committee to -- a committee to negotiate with
23 Mr. Golden and try to get these covenants to where --
24 they were a little bit to where Folsom Ridge and the
25 homeowners felt good about them.

1 I suppose you'll never get one you like
2 100 percent, but basically I agreed to be on that
3 committee. We called it Concerned Homeowners of Big
4 Island. We met with Mr. Golden for, I believe, April
5 through October and we had -- we had some agreements,
6 not a lot.

7 But anyway, the neighbors spent about
8 \$5,000 in lawyers' fees at that time for what we got
9 out of it was very little. Anyway, because of the
10 fact that we had really not negotiated -- we had not
11 got that much out of this negotiation, I personally
12 felt that I did not want to be in a homeowners'
13 association -- in this homeowners association.

14 I've never been in a homeowners
15 association, but I -- I had no -- I had no real
16 reasons not to be except I really felt like the
17 covenants and the bylaws that we were gonna be under
18 were still very much in favor of the developers.

19 So I refused to join. I was not the
20 only one that refused to join. There were many
21 homeowners that refused to join.

22 I felt like from my original contract --
23 well, it wasn't a contract per se, but it was an
24 agreement that Mr. Lees had put out to each one of
25 the -- each one of the homeowners. I felt like my

1 only requirements were to -- were to not have to pay
2 until I connected and I could connect up to the
3 system any time of my choosing.

4 And there was never any mention that I'm
5 aware of, of an HOA, although I was aware that there
6 would be five people -- according to Mr. Lees'
7 letter, there would be five people that would be
8 running it; one of them -- three of them would be the
9 developers and one of them would be the new
10 homeowners and one would be the existing homeowners.

11 So that was really -- as far as I was
12 concerned, that was an agreement that we had made
13 with Folsom Ridge. We made it with actually Dave
14 Lees. He's the one that wrote the letter. I felt
15 like that was my agreement with Folsom Ridge since he
16 was a -- I believe Rick said he was an equal partner.
17 To this day I -- I felt like the -- I felt like the
18 HOA was -- was -- because of voting by lots, was
19 not -- not a good thing for the homeowners, even
20 though real honestly, I don't think that they abused
21 it. But they could have. I don't know that they
22 ever -- I don't know that they ever -- ever used
23 those lots, but they could have, and the fact that
24 they could is not -- is not a good thing.

25 I guess to cut to the chase, I think

1 the -- I feel confident that the Commission will see
2 to it that this will be regulated. I wouldn't
3 even -- I wouldn't want to make a bet on the 393.
4 Either way it wouldn't surprise me. To this point
5 for my own personal thing, I've had all the sewer and
6 water I want. I'm done.

7 That stuff can run right on down the
8 lake, I'm not gonna turn them in. I don't want --
9 the last thing I want to do is be on the board. I
10 intend to go fishing for how many years I have left.
11 I don't even know how to tie a lure on a -- I don't
12 know how to tie a line on a lure anymore.

13 Anyway, I -- I'm retiring. And Rick,
14 you'll be glad to hear this, I'm retiring from the
15 sewer and water business. Aren't you gonna interrupt
16 me? I've talked up here five minutes and you haven't
17 said a damn word.

18 MS. HEINTZ: You are allowed a lot of
19 latitude in closing arguments, so no, I'm not gonna
20 interrupt you. You may say whatever you'd like.

21 MR. PUGH: Hell, I might start to enjoy
22 this. I may hold you guys here until midnight. I
23 don't think you can count on that. Public speaking
24 is not my cup of tea. As from my own personal taste,
25 and I have -- I can certainly understand why the

1 people want to have control of this, but I -- I
2 personally feel that any organization that I would
3 join I expect to be a part of it.

4 Now, I've been in a lot of organizations
5 like the Boy Scouts. As a matter of fact, I was an
6 Eagle Scout if you can believe that. My boy was an
7 Eagle Scout when he was a scout, going all the way
8 through that. I was there working.

9 So basically what I'm saying is, anything
10 that I join I feel like I should be willing to be --
11 take a part in the -- to oversee that it's operating
12 like it should. And I have done that on many, many
13 occasions on many organizations which I have been in.
14 And 75 years old, you've been in a lot of them.

15 Today I feel like to be in this 393, to
16 not be allowed to be a board member because I am not
17 connected to both services, I think that could be a
18 problem legally. I'm not -- these men would probably
19 know more about that than I, but I don't want --
20 don't get me wrong, I do not -- I do not want a board
21 job. As a matter of fact, I would not have a board
22 job, but I want the right to have that board job.

23 And I don't know whether -- whether this
24 ruling to where you have to be -- that you have to be
25 a user of both the sewer and the water, I don't know

1 whether that's something that's in the state 393
2 statutes or whether this is something that the board
3 members of the 393 decided was the proper way to go,
4 but I think that that is -- that is discriminatory
5 and I -- I worry a little bit about that.

6 As I stand today from my own personal --
7 from my own personal feelings, I -- I would rather
8 pay what I thought was 20 percent. Now, if --
9 Mr. Hiley, he says it's 40, but I would rather pay
10 this extra charge and be able to call Jim Merciel and
11 say hey, we got a problem out here, go fix it, I'm
12 going fishing. I think there is some advantages
13 to -- I have some differences with my friends and
14 neighbors because I do think that there's some
15 advantage of having Rick -- Rick having to worry
16 about who's gonna fix the leak rather than me. I
17 kind of like that. I've got used to it.

18 But I do think there's some advantages
19 to the regulated utility. I think liability -- I
20 think there's probably less chance of liability, but
21 Mr. Comley assured me that -- during break he assured
22 me that -- that liability cannot be passed on to the
23 members, and if something came up such -- such as a
24 liability suit -- or a legal suit, that the
25 membership is not gonna have to worry about the

1 liability, so I'll have to take his word for that.

2 At this point I -- I would prefer to
3 have the governing of our sewer and water systems
4 done through a regulated -- a regulated organization
5 such as the Public Service Commission. Have I talked
6 long enough yet?

7 MS. HEINTZ: Mr. Pugh, you are free as
8 far as I'm concerned to talk to your heart's content.

9 MS. FORTNEY: Your dogs are waiting for
10 you.

11 MR. PUGH: My dogs are waiting for me.
12 I gotta go.

13 JUDGE STEARLEY: Thank you, Mr. Pugh.
14 All right. I would next like to go through my list
15 of exhibits because I do believe I still have a
16 number of them that I have not ruled on; I had
17 reserved judgment to see if they could be
18 authenticated. Beginning from my earliest, if I'm
19 correct, Exhibit 21 -- we've worn out our system
20 today as well. Exhibit No. 21 was offered by
21 Ms. Orler. It was a group of documents, first one,
22 Central Bank, and I believe your objection still
23 stands on this, Mr. Comley --

24 MR. COMLEY: Yes, your Honor.

25 JUDGE STEARLEY: -- as to authenticity,

1 hearsay? And I'm not sure if there was a relevance
2 objection on that or not.

3 MR. COMLEY: At this stage I cannot
4 recall, but I think the basic objections were that
5 these were unauthenticated bank documents and there
6 was no custodian available to authenticate them and
7 keep them from being classified as hearsay.

8 JUDGE STEARLEY: I believe that was
9 correct, and without any further evidence being
10 admitted, I'm going to sustain those objections and
11 they will not come into evidence. Next I have
12 Exhibit 25, a May 18, 2000 letter to Mr. Welch, and I
13 believe the same circumstances apply.

14 MR. COMLEY: Exactly.

15 JUDGE STEARLEY: I will sustain and they
16 are excluded. Next I have Exhibit 27, an e-mail from
17 an Edward Jones. I believe the same objections
18 apply; is that correct?

19 MR. COMLEY: Yes, sir.

20 MS. ORLER: What was that objection,
21 please?

22 MR. COMLEY: There was no authentication
23 for this document. It was a letter, an e-mail from
24 Edward Jones and Joan Jones from Jeff Welch, and there
25 was no authentication for that from the Joneses.

1 MS. ORLER: I thought there was
2 authentication in the fact that Mr. Pugh and myself
3 received it as being copied in as committees of Big
4 Island property owners.

5 MR. COMLEY: You may have received it,
6 but it's still an out-of-court statement to prove
7 what the Joneses said.

8 JUDGE STEARLEY: That's correct, and no one
9 who was the author of this document could authenticate
10 it and no accompanying documentation from the authors
11 certifying it came in with it as well. So I will
12 sustain the objections and they are excluded.

13 Next one I have I believe is Exhibit 29,
14 an invoice. I don't believe I ruled on this. A
15 member, Vera Joann Hacker. Does this document look
16 familiar or is this one I've already ruled on?

17 MR. COMLEY: I show no marking for
18 ruling, and I think the objections raised pertain to
19 the remarks at the bottom of there. There was no way
20 to authenticate who they were made by, and I think
21 the offer was going to include that.

22 JUDGE STEARLEY: And I will sustain and
23 they are excluded from the record.

24 Let's see. And I believe Exhibit 34 is
25 the exhibit that Mr. Orler is gonna provide us with a

1 clean copy as a late-filed exhibit.

2 MS. ORLER: That is -- that is correct,
3 your Honor.

4 JUDGE STEARLEY: Ms. Orler, you will
5 have until Monday, March the 12th, to file that with
6 the Commission.

7 MR. COMLEY: Your Honor, we show no
8 ruling on 30 and that may be our fault.

9 JUDGE STEARLEY: Actually, I don't think
10 that I have a ruling marked on that either. Does
11 someone have a copy of that handy? In my many piles
12 I seem to have misplaced that one. Thank you very
13 much. I remember this, though, as starting with the
14 words "Gentlemen." The objections, as I recall, were
15 the same, authenticity, hearsay?

16 MR. COMLEY: Yes. Yes, your Honor.

17 JUDGE STEARLEY: Were there any
18 objections to relevancy as well? Not that it
19 matters, it's not been authenticated. So I will
20 sustain and it will be excluded.

21 Let's see, and Exhibit 38 I have an
22 e-mail from James Merciel to Pam Holstead. I don't
23 believe I've ruled on this. Everybody else's records
24 agree with that?

25 MR. COMLEY: Yes.

1 JUDGE STEARLEY: And I believe the
2 objections are the same, authenticity, hearsay?

3 MS. ORLER: I think Mr. Merciel
4 authenticated it, but I thought there was an
5 irrelevance issue.

6 MS. HEINTZ: I don't believe Mr. Merciel
7 authenticated it. I thought he authenticated 34.

8 JUDGE STEARLEY: Yeah, I thought we
9 looked at 33, 34, 35 with Mr. Merciel.

10 MS. HEINTZ: Right. I don't recall
11 going over 38 with Mr. Merciel.

12 JUDGE STEARLEY: I don't either and I
13 will sustain and it will be excluded.

14 Exhibit 44 entitled "Ratification of
15 Amended and Restated Declaration of Covenants and
16 Conditions." I don't believe I've ruled on this one
17 either.

18 MS. ORLER: I believe that was -- we
19 substituted the respondent's copy that was submitted
20 with Barbara Brunk's schedule.

21 MR. COMLEY: Right.

22 JUDGE STEARLEY: And what was that
23 exhibit number?

24 MR. COMLEY: The exhibit that Ms. Orler
25 identified was No. 45, and instead of using that, we

1 would -- we agreed that Ms. Brunk's exhibit attached
2 to the testimony would suffice. And that was the
3 signed version and also the recorded version. So I
4 don't know whether Ms. Orlor withdrew the exhibit, it
5 was just not admitted or it was -- it was just not
6 admitted but that piece is in evidence.

7 JUDGE STEARLEY: Okay. And state for me
8 again, Mr. Comley, which exhibit is it now in?

9 MR. COMLEY: I think it's Barbara
10 Brunk's testimony and it may be schedule 4 of her
11 testimony.

12 JUDGE STEARLEY: Okay. Let me make a
13 note of that. I believe that's right and let's note
14 it as being withdrawn then. I think that would be
15 the proper way.

16 On Exhibit 46 --

17 MR. COMLEY: This is one I agreed to
18 acquire copies of the signed and unauthored versions
19 of the bylaws. I think the version that Ms. Orlor
20 had prepared did have interpretive remarks in the
21 margin, and I do have that for distribution to the
22 parties right now.

23 JUDGE STEARLEY: Very good. And if
24 there are no objections to the clean copy, it will be
25 received and admitted into evidence.

1 (EXHIBIT NO. 46 WAS RECEIVED INTO
2 EVIDENCE AND MADE A PART OF THE RECORD.)

3 JUDGE STEARLEY: Okay. From your
4 exhibit list are there any others that I have not
5 finally ruled on?

6 MS. ORLER: Yes, your Honor, the
7 Christine Ricketts letter that we were unable to
8 authenticate with DNR, I was going to do a late-
9 filing on that, having had the opportunity to
10 authenticate that with the Department of Natural
11 Resources, and I --

12 MS. HEINTZ: Do you know what number
13 that was?

14 JUDGE STEARLEY: I believe you're
15 referring to Exhibit 51. Is this the letter to
16 Ricketts, 11/29/01?

17 MS. ORLER: Yes, signed by Mr. Golden,
18 yes.

19 JUDGE STEARLEY: And by my listing, I
20 have ruled on it and sustained the objection as to
21 authenticity and excluded it. That's what I have
22 listed on my exhibits list.

23 MR. COMLEY: That confirms my notes too.

24 MS. HEINTZ: That's also what I show.

25 JUDGE STEARLEY: And that ruling

1 remains.

2 MS. HOLSTEAD: Your Honor, can you
3 confirm your ruling on No. 37 for me, please?

4 JUDGE STEARLEY: 37, I have that as
5 being excluded.

6 MS. HOLSTEAD: Thank you.

7 JUDGE STEARLEY: I believe it was also
8 the same, authenticity, hearsay. My notes on Exhibit
9 No. 54 are a little scribbled here.

10 MR. COMLEY: On 54 we're showing that as
11 a -- admitted.

12 JUDGE STEARLEY: And that's what I
13 thought is a DNR letter to Mr. Golden; is that
14 correct?

15 MR. COMLEY: Yes.

16 JUDGE STEARLEY: 11/16/01, and that was
17 finally authenticated.

18 MR. COMLEY: Yes.

19 JUDGE STEARLEY: Any other exhibits at
20 issue?

21 (NO RESPONSE.)

22 JUDGE STEARLEY: I believe my list is up
23 to date at this time. Are there any other exhibits
24 that we missed from any of the parties and their
25 offerings?

1 (NO RESPONSE.)

2 JUDGE STEARLEY: Okay. Very well.

3 Before going any further, I want to note that these
4 cases have not been formally consolidated. We did
5 order a joint hearing on them because of the
6 interrelated issues, but to my knowledge, we
7 consolidated all the complainants' cases into one
8 case but we never formally consolidated these cases.
9 I believe the issues are such that I will issue an
10 order to consolidate these cases for purposes of the
11 Commission ruling in a single report and order unless
12 the parties have any objection to that.

13 MR. COMLEY: Your Honor, I'm not clear
14 on that and I don't know if I'm prepared to formulate
15 an objection to that right now, but ...

16 JUDGE STEARLEY: The cases kind of build
17 on one another, we have to rule on the issue of
18 jurisdiction. I mean, if we rule we don't have
19 jurisdiction, then the complaint case and the
20 transfer case essentially become mooted. So I see
21 them as being interrelated in terms of -- I mean, we
22 can't get to one without deciding the other.

23 MR. COMLEY: We have filed the
24 application case on a contingency and the contingency
25 is decided in the other case, and my thoughts would

1 be that the need for consolidation is not as
2 immediate or critical. I don't have an objection to
3 the Commission perhaps making a report and order that
4 would cover both cases and having it in the same
5 document, but --

6 JUDGE STEARLEY: Okay.

7 MR. COMLEY: -- as far as consolidating
8 the cases, I would -- I would object to the
9 consolidation of the cases. And you can overrule
10 that, of course, but my argument would be that
11 because of the nature of the issues, although they
12 seem to be similar and the joinder of them for
13 hearing was a convenience, they are still distinctly
14 different and would not necessarily be perfect for
15 consolidation.

16 JUDGE STEARLEY: All right. The parties
17 have no objection to us combining in a single report
18 and order for issuing a decision on the both matters?

19 MR. COMLEY: I don't have any objection
20 to that.

21 JUDGE STEARLEY: All right.

22 MS. FORTNEY: I have a question.

23 JUDGE STEARLEY: Yes.

24 MS. FORTNEY: Mr. Comley, when you said
25 application case, did you mean the asset transfer

1 cases?

2 MR. COMLEY: Right.

3 MS. FORTNEY: Okay. I went back to the
4 0480 and freaked out. Okay.

5 JUDGE STEARLEY: And Mr. Comley, the
6 manner in which I thought I would handle your
7 prefiled objections to testimony, what I thought I
8 would do was take your table, add an additional
9 column to that table and list my rulings on those
10 objections so that they match your line-by-line
11 objections, and then I would issue that
12 simultaneously with the order. Is that acceptable to
13 you?

14 MR. COMLEY: That's acceptable to me.

15 JUDGE STEARLEY: All right. Originally
16 when we were planning this case, we asked that the
17 transcripts be expedited, and it's my understanding
18 now that we're gonna need some additional time. So
19 for the convenience of our court reporters who I know
20 are quite busy, is there any objection to allowing
21 them to go back to their normal ten-day business
22 schedule for producing a transcript?

23 MR. COMLEY: No objection to that.

24 (NO RESPONSE.)

25 JUDGE STEARLEY: All right, then, you've

1 got direction on that. Okay. And I am gonna order
2 post hearing briefs and proposed Findings of Fact and
3 Conclusions of Law. Now, normally we kind of look at
4 20 days post transcripts, but we know we've got a
5 number of other issues on timing here, so I'd like to
6 hear from the parties.

7 I know, Mr. Mills, you have an extremely
8 tight hearing schedule. How many days would the
9 parties like for both briefing and their findings --
10 proposed Findings and Conclusions following the
11 filing of the transcripts.

12 MR. MILLS: I believe we're expecting
13 the transcripts to be ready roughly March 12th?

14 JUDGE STEARLEY: Ten business days.

15 MR. MILLS: Ten business days.

16 JUDGE STEARLEY: So I think it would be
17 the end of the week. It would be a Friday which
18 would be like the 16th, if I'm counting correctly.

19 MR. MILLS: So 20 days from that is
20 roughly April 5th or 6th.

21 JUDGE STEARLEY: That would be correct.

22 MR. MILLS: I would propose pushing it
23 back a few days in the following week, sometime the
24 week of April 9th.

25 MR. COMLEY: I have no objection to

1 that.

2 JUDGE STEARLEY: Okay. I can -- do the
3 parties feel like they would need any additional time
4 beyond that? I want to make this what's practical
5 for the parties.

6 MS. ORLER: Excuse me, could I ask for
7 some clarification with regard to briefs and the
8 other segment of that or --

9 JUDGE STEARLEY: Yes, I will get to that
10 in just a moment. We'll pick a date here and then
11 we'll come back to that, Ms. Orler.

12 MS. ORLER: Separate, okay.

13 JUDGE STEARLEY: I would propose, then,
14 that we make it Friday the 15th. That will build in
15 a couple extra days for our pro se complainants.

16 MR. MILLS: I think it's -- I believe --
17 I believe in April that Friday is Friday the 13th.

18 JUDGE STEARLEY: Oh, I'm sorry. I had
19 my cursor half covering that up. What a perfect day
20 I picked for the filing of briefs. It will be
21 Friday, April 13th, and I believe that would give us
22 well in a time frame for us to be able to generate an
23 order and get a Commission vote prior to the day
24 Ms. Holstead mentioned, which I believe was June 30.
25 Is that schedule acceptable to the parties?

1 MS. HOLSTEAD: That's acceptable to the
2 393s.

3 JUDGE STEARLEY: All right. Are
4 there -- okay. Ms. Orlor, as far as briefs, we have
5 some rules on those and I will issue an order, probably
6 be Monday or Tuesday, which will lay out these dates
7 that we've established today, and I will reference
8 specific sections in our rules which cover briefs
9 which talk about certain filing requirements in those.

10 What you basically do is you'll take
11 those issues that went out in the order of the
12 issues adopted and you'll list those issues out,
13 and you're gonna make your best argument under each
14 one of those issues to argue for your position.
15 Within that argument, you need to look at the
16 transcripts of this case and the evidence that's been
17 admitted.

18 So when you make a statement where you're
19 trying to present a fact or some type of conclusion,
20 you can cite to the passage in the transcript,
21 somebody's testimony, some document that's been filed,
22 to support your statements, and you'll want to do
23 that throughout and you'll go down that list. I
24 believe we have a total of ten issues.

25 You'll make your arguments under each

1 one, and you'll support those with the relevant
2 documentation that's in the record that you can find
3 by citing to those. And you can cite to those by at
4 the end of a sentence, you just put in parentheses,
5 for example, transcript of testimony of, say,
6 Mr. McDuffey, page 15, lines 4 through 10, something
7 of that -- does that make sense?

8 MS. ORLER: Uh-huh.

9 JUDGE STEARLEY: Or Hearing Exhibit 30,
10 whatever that may have been. Preferably one that's
11 actually been received and admitted into evidence.
12 So does that offer a little clarity on the briefs?

13 MS. ORLER: And then wasn't there
14 another segment of information?

15 JUDGE STEARLEY: Yes, a separate filing
16 which is called proposed Findings of Fact and
17 Conclusions of Law. And what you will do is you will
18 list out the facts that you propose that the
19 Commission will find in this case, and again, you
20 will cite a reference to those facts.

21 Think in terms of what facts are
22 relevant to those ten issues. Those are the
23 ones that you'd want to list out. The second part
24 of that Conclusions of Law is where you look to
25 the state statutes, and some of that information

1 is actually listed for you in the issue, refers to
2 a statute. You can quote the statute and then make
3 your -- make your statements as to how you believe
4 the Commission should conclude that issue of law and
5 give relevant citations to the record that you
6 believe support that conclusion.

7 So do you understand the difference between
8 what I'm saying is a fact and a conclusion of law?

9 MS. ORLER: Yes, uh-huh.

10 JUDGE STEARLEY: Okay. All right. Are
11 there any other matters we need to -- oh, there
12 are -- there is another matter. Mr. Comley, in terms
13 of the additional testimony from Mr. Kenneth Carol.

14 MR. COMLEY: What I'd like to do is
15 visit with the parties as best I can on Monday,
16 and by that time I'll have an idea about how we
17 can do this. I'm thinking about the idea of
18 preparing a set of written testimony for Mr. Carol,
19 and at that stage proposing that there would be an
20 opportunity within ten to 15 days for the parties to
21 add a set of rebuttal to that, if necessary, and then
22 submit that as late-filed exhibits to the record.

23 JUDGE STEARLEY: Very good. And what
24 I will do when that is submitted is I'll probably
25 set like a five-day response time, perhaps seven days

1 at most, where the parties can file any responses to
2 the -- you know, if they object to the late-filed
3 exhibit for whatever reasons. But if they're
4 providing rebuttal, I'm not necessarily anticipating
5 we're going to get objections to those filings.

6 MR. COMLEY: The other thing would
7 be whether or not a day of hearing would be set
8 aside to have Mr. Carol and the others sponsor their
9 testimony, and we'll have to talk about that to see --

10 JUDGE STEARLEY: That is true. I mean,
11 if we cannot come to some type of terms of agreement
12 on this, we can set aside another portion of a day
13 and bring Mr. Carol in.

14 MR. COMLEY: And aside from that,
15 we might figure out a stipulation on this.
16 that's another consideration, and that will be
17 something I'll try to explore with the parties on
18 Monday.

19 JUDGE STEARLEY: Okay. Very good. And
20 as soon as you figure out what that's gonna be, if
21 you could please file some type of status report with
22 me just to let me know?

23 MR. COMLEY: Certainly.

24 JUDGE STEARLEY: Thank you very much.
25 Now, are there any other matters we need to address

1 before we adjourn?

2 (NO RESPONSE.)

3 JUDGE STEARLEY: Ms. Fortney?

4 MS. FORTNEY: Yes. Your Honor, because
5 Stan was not here today, does he still do the
6 brief -- or actually he didn't do -- how does that
7 work? Because he wasn't -- he didn't file testimony
8 or anything but he was here.

9 JUDGE STEARLEY: Mr. Temares is a party
10 to this action.

11 MS. FORTNEY: Uh-huh, right.

12 JUDGE STEARLEY: I cannot force him to
13 participate in every aspect of the case.

14 MS. FORTNEY: Right.

15 JUDGE STEARLEY: You know, if he wants
16 to collaborate with you-all on the brief and add his
17 signature to that --

18 MS. FORTNEY: That's really my question.

19 JUDGE STEARLEY: -- that is fine.

20 MS. FORTNEY: Okay. Thank you.

21 JUDGE STEARLEY: Any other matters we
22 need to address?

23 (NO RESPONSE.)

24 JUDGE STEARLEY: All right. The
25 words you're all waiting to hear: In the matters of

1 Case Number WC-2006-0082, et al. and Case Number
2 WO-2007-0277, our hearing is hereby adjourned.

3 (WHEREUPON, the hearing in this case was
4 concluded.)

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1 I N D E X

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7	Exhibit No. 27 An e-mail from		
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14	to Mr. Hiley from		
15	Mr. Burford and		
16	Mr. Hiley's response to Mr. Burford	*	**
17	Exhibit No. 34 Copy of an e-mail sent		
18	to Jim Merciel from Mrs. Hiley	*	***
19	Exhibit No. 35 E-mail from Phil		
20	Hiley	*	**
21	Exhibit No. 38 E-Mail from James		
22	Merciel to Pam Holstead	*	**
23	Exhibit No. 45 Document entitled		
24	"Ratification of Amended and Restated Declaration		
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8	*	Marked in a previous volume	
9	**	Offered but rejected by Judge Stearley	
10	***	Will be received upon late-filing	
11	****	Withdrawn	
12	*****	No objection but not orally received by	
13		Judge Stearley	
14			
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1 CERTIFICATE OF REPORTERS

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)
5

6 We, KELLENE FEDDERSEN, RPR, CCR, CSR,
7 and PAMELA FICK, RMR, RPR, CSR, CCR #447, within and
8 for the State of Missouri, do hereby certify that the
9 testimony of said witnesses were taken by us to the
10 best of our ability and thereafter reduced to
11 typewriting under our direction; that we are neither
12 counsel for, related to, nor employed by any of the
13 parties to the action to which this hearing was
14 conducted, and further that we are not a relative or
15 employee of any attorney or counsel employed by the
16 parties thereto, nor financially or otherwise
17 interested in the outcome of the action.

18

19 _____
20 KELLENE FEDDERSEN, RPR, CCR, CSR
21 PAMELA FICK, RMR, RPR, CCR, CSR
22
23
24
25