

FILED³

DEC 18 2006

Missouri Public
Service Commission

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via U.S. Mail, on this 18th day of December, postage prepaid to: the General Counsel's Office and the Office of Public Counsel at the Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO. 65102; and to Mark W. Comley, 601 Monroe Street, Suite 301, P.O. Box 537, Jefferson City, MO. 65102; and Charles E. McElyea, 85 Court Circle, P.O. Box 559, Camdenton, MO. 65020; and the Attorney General's Office, P.O. Box 899, Jefferson City, MO. 65102.

Copies of this document were sent via E-mail to:

Cindy Fortney, 3298 Big Island Drive, Roach, MO. 65787
Benjamin D. Pugh, 1780 Big Island Drive, Roach. MO. 65787
Joseph J. Schrader, 1105 Yorktown Pl., DeLand, FL. 32720
Stan Temares, 1836 Big Island Drive, Roach, MO. 65787
Ben F. Weir, 3515 SW Meyer Blvd., Blue Springs, MO. 64015
Elaine H. and William T. Foley, II, 15360 Kansas Ave., Bonner Springs, KS. 66012
Mark and Deborah Hesley, 2308 Big Island Dr., Roach, MO. 65787
Don Deckard, 2218 Big Island Dr., Roach, MO. 65787
Bernard J. Beaven, 13900 E. 217, Peculiar, MO. 64078
Jerry Steinhour, Lot 57, P.O. Box 737, Seneca, Ill. 61360
Joseph Geary Mahr, 1886 Big Island Dr., Roach, MO. 65787
Arthur W. Nelson, 6504 Melody Lane, Parkville, MO. 64152
Eugene Prather, 1604 Big Island Dr., Roach, MO. 65787
Donald J. and Frances K. Weast, 5291 Kerth Rd., Mehlville, MO. 63128
Stephen D. Kleppe, 8210 E. Tether Trail, Scottsdale, AZ. 85255

FILED³

DEC 18 2006

Missouri Public
Service Commission

Missouri Public Service Commission

Case number WA-2006-0480

Big Island Sewer & water systems

REBUTTAL TESTIMONY

Of

Benjamin D. Pugh

Roach, Missouri

December- 2006

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI


In the Matter of the Application of Big Island Water)
& Sewer Company, Inc. for a Certificate of)
Convenience and Necessity Authorizing It to)
Construct, Install, Own, Operate, Control, Manage)
and Maintain a Water and Sewer System for the)
Public Located in an Unincorporated Area of)
Camden County, Missouri)

Case No. WA-2006-0480

AFFIDAVIT OF [TYPE NAME]

STATE OF MISSOURI)
) ss.
COUNTY OF CAMDEN)

Benjamin D. Pugh, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 11 pages to be presented in the above case; that the answers in the foregoing Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.


Benjamin D. Pugh

Subscribed and sworn to before me this 12th day of December 2006.


Notary Public

KRIS CHRISTENSEN
Notary Public - Notary Seal
STATE OF MISSOURI
Camden County
Commission # 06897333
My Commission Expires June 7, 2010

**REBUTTAL TESTIMONY
OF**

**Benjamin D. Pugh
CASE NO. WA 2006 0480**

1 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

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

3 **Q. BRIEFLY WHAT IS YOUR EMPLOYMENT BACKGROUND?**

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

5 **Q. WHAT IS YOUR INTEREST IN BIG ISLAND?**

6 A. My wife and I have been property owners on Big Island for 44 years. We have been full time
7 residents since my retirement in 1986. I am very concerned that the growth of Big Island be a
8 responsible and safe growth for its residents. Since Folsom Ridge came in 1998 there have been
9 numerous problems involving the water/sewer utility that have potential health risks to residents.

10 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

11 A. To give the Commission and their staff the documentation necessary to confirm the necessity of the
12 sewer and water system on Big Island to be regulated. I filed a formal complaint case # WC 2006
13 0090 against Folsom Ridge, LLC owning and controlling Big Island Home Owners Association
14 (BIHOA). Mr. Golden and Mr. Rusaw of Folsom Ridge created Big Island Water & Sewer Co. Inc.
15 in response to those complaints. This rebuttal emphasizes many major violations by Folsom Ridge,
16 the applicants; but nothing could make my case any better than a statement under oath by
17 homeowner Phil Hiley at the Camdenton, Mo. June 2, 2006 public hearing, stating: "Mr. Golden
18 lets me vote even though I'm not a member". This type of management needs regulation, therefore
19 I see no other solution other than for Folsom Ridge (Big Island Water & Sewer Co. Inc.) to be
20 regulated. I have not signed any letter of ratification agreeing to membership in the BIHOA,
21 however I do receive sewer service. I do attend the meetings since they affect my service;
22 however, since I am not a member I do not vote, as it is not legal or ethical.

23 **Q. WHY ARE YOU SO INSISTENT THE APPLICANT NEEDS REGULATION ?**

1 A. Regardless of what legal entity they use, the applicant is still Mr. Golden & Mr. Rusaw. My
2 concerns started on April 23, 1999 when I was informed that the Department of Natural Resources
3 (DNR) was on Big Island issuing violations for improper installation practices on the sewer and
4 water system by Folsom Ridge LLC, (i.e. Mr. Golden and Mr. Rusaw). It was disappointing to
5 many homeowners that this violation was necessary. Notice of Violation # 1315 JC issued May 25,
6 1999. **(BP Schedule 1)** Ms. Brunk referred to this violation in her testimony, page 10 line 5.

7 Residents started investigating and learned that Folsom Ridge was not only issued violations for
8 improper installation; but by their own admission Folsom Ridge had installed 4600 feet of pipes
9 with sewer and water pipes in the same trench without a construction permit from the DNR. These
10 violations were not accidental, but intentional. They were only the start of 8 years of continual and
11 repeated violations of the State of Missouri permits, regulations and codes. **(BP Schedule 2)**

12 **Q. WHY DID MR. GOLDEN AND MR. RUSAW NOT FILE A DIRECT TESTIMONY?**

13 A. They have been active managing owners and developers since 1998. It seems they should explain
14 their actions and they should be accountable for their activities on Big Island. Ms. Brunk has only
15 been involved with the development of Big Island since 2004. Ms. Brunk is providing testimony for
16 a 6 year period where she has no personal involvement.

17 **Q. MS. BRUNK ON PAGE 10, LINES 16-17, IN HER TESTIMONY REFERS TO**
18 **THE DNR CITING FOLSOM RIDGE FOR VIOLATIONS. SHE SAYS THAT THE**
19 **ACTIONS TAKEN TO REMEDY THE VIOLATIONS WERE VOLUNTARILY TAKEN**
20 **BY FOLSOM RIDGE. DO YOU AGREE THAT THESE ACTIONS WERE**
21 **VOLUNTARY?**

22 A No. It was due to the complaints of several homeowners that were brought to the attention of the
23 DNR that the systems were not installed according to Missouri regulations and codes. Many
24 meetings with Folsom Ridge were unsuccessful. . In fact under individual signatures, Folsom Ridge

1 confirmed to residents that the water and sewer system were installed properly. (BP Schedule 3).
2 The homeowners' complaints included many meetings with the DNR. Two meetings included Dr.
3 Wayne Cooper MD. Mo.State Representative Dist 155 who had concerns for the alleged health
4 issues on Big Island. DNR personnel Breck Summerford, John McEachen, Elena Seon, Clinton
5 Finn, Mike Tharpe, Mary Ann Retten, Keith Forck, Steve Jones, and Tim Neal attended various
6 meetings with concerned homeowners of Big Island. Folsom Ridge did not attend any of these
7 meetings.

8 Q. MS. BRUNK STATED ON PAGE 9, LINES 19-21, "IT IS MY
9 UNDERSTANDING THAT DNR HAS APPROVED THE CONSTRUCTION OF BOTH
10 SYSTEMS AND THAT BOTH SYSTEMS COMPLY WITH THE SPECIFICATIONS
11 SET OUT IN DNR'S APPROVED CONSTRUCTION PERMITS, INITIAL AND
12 MODIFIED FINAL APPROVAL OF THE ORIGINAL PHASE ONE
13 INSTALLATION". BEN, DO YOU BELIEVE THAT MS. BRUNK HAS BEEN
14 GIVEN ALL OF THE FACTS?

15 A. No. I don't believe that she has been given all of the facts verbally or written. The original systems
16 were proved to be in non-compliance by the test digging, which was done at the insistence of
17 concerned homeowners on January 12, 2004. That DNR test resulted in a Settlement Agreement
18 (SA) between Folsom Ridge, DNR, and the Attorney General Offices, to correct the improper
19 installation. There are still many questionable reinstallation problems that do not conform to a water
20 system free of unnecessary health risks. Additionally, in my opinion, the following are existing
21 problems that are creating a potential health risk to residents, as of the writing of this rebuttal.

22 **Incorrect labeling on uprights & deactivated water valve uprights not removed**

23 1. Several Uprights (valve boxes) have sewer and water valves improperly labeled.

24 Example: sewer valves labeled water on the valve boxes, (uprights)

1 2. Several of the original uprights (valve boxes) at the homeowners' property easement
2 were not removed after water pipe deactivation for the purpose of complying with the
3 Settlement Agreement. With the many incorrectly labeled and deactivated uprights, it
4 could certainly create a unnecessary health risk for improper repairs by workers not
5 familiar with the Big Island systems. **(BP Schedule 4)**

6 **Sewer and water valve together**

7 There are Sewer and water valves in the same upright with mere inches separation.
8 **(BP Schedule 5)**

9 **Shutoff valves**

10 Only one home on the causeway has a shut off valve, (Haddock home) in an upright
11 coming off the main line to the home service line. Other homes which have purchased a
12 tap, other than those on the causeway, have a shutoff valve at or near the property
13 easement.

14 **Causeway water main reinstallation**

15 The relocated water main is on the lower road level, with the sewer main on the upper
16 private road with water service line extensions crossing perpendicular over the sewer main
17 without sleeving. Logic would tell me that the sewer main should have been relocated to
18 the lower level, and the water main should have remained in place in the upper private
19 road. As it is currently installed any sewage leakage could gravity drain to the lower water
20 main and contaminate the soil surrounding the newly installed potable water main pipe.
21 The causeway water main is at the lowest elevation of the complete system. **(BP**
22 **Schedule 6)**

1 **Missouri Dept of Health chart**

2 The enclosed chart (BP Schedule 7) states: A public water supply well should be a
3 minimum of 300 feet from sewage tanks, disposal area, or lagoons. Big Island separation
4 between the well and the sewer filter bed is only approximately 150 foot. Why was the well and
5 filter bed separation recommended by the Health Dept. and Folsom Ridge's own project engineer
6 Jim Jackson not in compliance? The DNR approved the close proximity of the well and the filter
7 bed. It appears that the two State Departments have conflicting minimums with the DNR minimum
8 increasing the risk of drinking water contamination on Big Island. Leaks can and do occur around
9 the filter bed. (BP Schedule 8) Example: On April 20, 2001 while digging a trench in his yard,
10 homeowner Duane Stoyer's ditch filled with contaminated water. This contaminated water pool
11 was well above the elevation of his septic system. The Camden County Sewer Dept was called.
12 They took samples of the polluted water and sent them to McDuffy Lab for analysis. (10,909 fecal
13 coliform per 100 mi) (BP Schedule 9) Pictures were taken along the road directly above the
14 Stoyer home, of sewerage water months after the first discovery on April 20 2001..(BP
15 Schedule 10) Mr. Stoyer's home is located directly below the filter bed on the lakeside of
16 Big Island Drive. A break in a 4-inch sewer line, buried only inches below the ground
17 surface, was finally located adjacent to the filter bed and repaired four months later. I would
18 have preferred my friend was telling his own story; but Mr. Stoyer died of kidney cancer,
19 April 9, 2006 before his story could be told. In his complaint, WC2006-0129 to the
20 commission dated 9-26-2005; Mr. Stoyer stated "I am presently under medical treatment
21 fighting kidney cancer. My cancer might have been caused by the raw sewerage running into
22 the lake as I, like most residents of the lake, was quite active in and around the water at the
23 same time this took place."

24 **4-inch water & sewer mains still in same trench**

1 May 15, 2006 Mr. Krehbiel, project engineer, requested and received approval from Mr.
2 Breck Summerford to replace a water main, which was incorrectly installed in the same
3 trench as the sewer line. This project provides for the construction of a new 4-inch water
4 line in a separate trench at least 10 foot from the sewer line. The new water line will be
5 approximately 715 feet in length. Since the 715-foot waterline has not yet been
6 separated, it would appear that this system is not yet in compliance to meet the intent of
7 the Settlement Agreement dated, April 26, 2004. Note: At the time of this writing
8 November 20, 2006, this water line and sewer line separation had not been started. On
9 November 19, in a conversation with Breck Summerford we discussed this project and
10 Mr. Summerford was to contact Mr. Krehbiel in relation to this delay. (BP Schedule 11)

11 Q. WITH REGARD TO SPECIFIC VIOLATIONS, DO YOU AGREE THAT MS.
12 BRUNK HAS STATED ALL OF THE VIOLATIONS IN HER TESTIMONY?

13 A. No, Apparently Ms. Brunk is not aware of the many violations committed by Folsom Ridge.

14 Below are many of the violations which I have been made aware:

- 15 1. Folsom Ridge (FR) received a violation review #31182-98 for installation of 4600 feet
16 of sewer and water line in the same trench without a permit from the Dept. of Natural
17 Resources. November 19, 1998. (BP Schedule 2)
- 18 2. FR received a notice of Violation # 1315 JC by the DNR for failure to construct water
19 lines in accordance with approved plans May 25, 1999. (BP Schedule 1)
- 20 3. FR received a notice of Violation by the Camden County Road and Bridge Department
21 for digging up a utility crossing to repair a leaking sewer line, not installed in a sleeve,
22 which tore up new asphalt without a permit. (9-26-2000) (BP Schedule 12)

1 4. FR received a DNR notice of Violation JC 011193 for improper disposal of old roofing
2 near the wastewater treatment plant and public water well. September 26, 2000. (BP
3 **Schedule 13**)

4 5. Settlement Agreement (SA) required Folsom Ridge LLC to correct the violations
5 observed during the digging of the test pits on January 12, 2004. The test diggings
6 proved that the water and sewer lines had been improperly installed per DNR
7 regulations. Folsom Ridge LLC violated # 15 of that agreement in 2005. (Ms. Brunk
8 included a copy of the Settlement Agreement in her testimony).

9 6. DNR inspection March 18, 2005: Four unsatisfactory features recommended for
10 correction:

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

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

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

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

21 **(BP Schedule 14)**

1 7. Notice of Violation #11210SW by the DNR for causing or permitting the construction,
2 installation or modification of the community public water supply without written
3 authorization by extending Phase one water main off the island to the Island View
4 Estates. (BP Schedule 15)

5 8. The DNR issued a series of violations of the Missouri Safe Drinking Water
6 Regulations:

7 a. The public water system utility failed to collect routine samples from the
8 distribution system as required by the Safe Drinking Water Regulation
9 10 CSR 60-4.020(1).

10 b The public water system utility dispensed water without obtaining a written
11 permit to dispense water in violation of the Safe Drinking Water Regulation
12 10 CSR 60-3.0103.010

13 c. The public water system utility failed to develop a written total coliform bacteria
14 sample-siting plan as required by Safe Drinking Water Regulation
15 10 CSR 60- 4.020(1)(A).

16 d. The public water system utility failed to obtain written authorization from the
17 department prior to the construction, alteration, or extension of the water system
18 in violation of safe drinking water regulation 10 CSR 60-3.010(1). June 28 2005.
19 (BP Schedule 16)

20 _Q. Have you ever been intimidated or assaulted by any partner of Folsom Ridge, LLC?

1 A. Yes. David Lees, a partner of Folsom Ridge at the time, made several attempts to physically harass
2 not only me, but also other members of the "Concerned Homeowners", a committee formed to
3 represent over 20 homeowners on Big Island. This committee was organized for the purpose of
4 negotiating covenants and bylaws with Mr. Golden for the betterment of the homeowners.
5 Other members of this committee had instances where Mr. Lees would swerve his truck to
6 intimidate us as we were walking on the county road. On one of these instances, May 19, 2000, Mr.
7 Lees came so close to me with his truck that I thought he would hit me as well as my two dogs I had
8 on leash. I reported that incident to the Camden County Sheriff's office. May 19, 2000. **Complaint**
9 **#YR 00-1315.** My other instance with Folsom Ridge partner David Lees was on May 9, 2001. I was
10 taking pictures of Mr. Lees and crew working on a reported leak 19 days after the leak was reported.
11 Mr Lees was noticeably irritated and on June 19, 2001, I was physically assaulted with his fist to my
12 jaw with the threat; "I am going to sue you for invasion of my privacy". This incident was also reported
13 June 19, 2001 as an assault 3rd degree, **complaint # YR01-1567** and acted on by the Sheriff dept and
14 the Offices of the County Prosecuting attorney. In this case I was only seeking damages for dental
15 work, (a crown and tooth pulled) and received that relief settling out of court through the efforts of the
16 Camden County Prosecuting Attorney. Many months prior to these incidents I received a visit from
17 Mr. Larry Toombs, telling me he was only the messenger for David Lees who wanted me to know that
18 he (David Lees) intended to sue me for my involvement with the residents who were dissatisfied with
19 the installation of our new sewer and water system. **(BP Schedule 17)**

20 **Q. HAS YOUR REBUTTAL BEEN MODIFIED AND REVISED?**

21 A. Yes, In a meeting scheduled by intervenors on 12-13-06 with PSC staff, Intervenor were told that
22 their request for a receiver to operate, manage and administer the water/sewer on Big Island would
23 not be granted by the Commission. Therefore our only alternative was to allow the certification of
24 Mr. Rusaw and Mr. Golden, BIWS Co. Inc. with conditions imposed by the Commission.

1 Q. IS ANY OTHER INTERVENOR GIVING REBUTTAL TESTIMONY?

2 A. Yes

3 Q. ARE YOU IN AGREEMENT WITH THE REBUTTAL TESTIMONIES OF THE OTHER
4 INTERVENORS IN THIS CASE?

5 A. Yes

6 Q. DOES THIS COMPLETE YOUR REBUTTAL?

7 A. Yes , with the exception of a summary.

8 **Summary:** Ms. Brunk made a beautiful presentation of Mr. Golden's and Mr. Rusaw's Folsom Ridge LLC
9 future plans for Big Island. **(BB Schedule 3)** They are very impressive; however, they are irrelevant to this
10 certification process that involves the past performances of Mr. Golden and Mr. Rusaw in their construction,
11 operation, management and administration of the water and sewer utility. In view of all the violations and
12 controversies cited, Big Island would be best served by a regulated utility. The Staff and Commission need
13 to be made aware of the past installation practices of the sewer and water system, along with the improperly
14 operated and managed BIHOA, operating as a unlicensed public utility..The applicants have shown little
15 respect for the authority of the Dept. of Natural Resources. From the time of Folsom Ridge's arrival to Big
16 Island in 1998, Folsom Ridge's project engineer Jim Jackson on behalf of Folsom Ridge, pleaded with Mr.
17 Summerford to allow the illegally installed sewer and water system remain in the same trench. He pleaded
18 that Folsom Ridge be permitted to continue the complete system with the sewer and water pipes in the same
19 trench. Even after Mr. Summerford properly denied this request to Folsom Ridge, they continued to
20 disregard DNR orders, and installed the complete system in an unsafe manner, with the water and sewer
21 mains in the same trench. re: Engineer Jim Jackson to Breck Summerford November 22, 1998 **(BP**
22 **Schedule 2)**

1 As a homeowner on Big Island but not a customer /user of the community well, having my own deep well, it
2 bothers me that my neighbors who depend on the community well for their drinking water have been
3 exposed to unnecessary contamination risks because the applicants were distributing drinking water for 5
4 years without sample testing as per Safe Drinking Water Regulation 10 CSR 60-4.020(1). The 5 years of
5 sample testing consisted of samples from the well head only; not from the distribution lines as required by
6 regulations and codes.

7 **(BP Schedule 16)** The applicants were made aware by DNR how to take correct samplings.

8 The concerned homeowners who have chosen to become complainants and intervenors have tried to
9 compile documentation for the Commission for them to make a logical and just decision in this certification
10 process. It must be also considered by the commission that this documentation is only that which we, the
11 intervenors, have been made aware.

12 The applicants, as documented in this rebuttal have shown little respect for the State of Missouri and have
13 given little priority to one of our most precious assets, clean, safe drinking water. I am not inferring that the
14 drinking water has ever been unsafe, only that Folsom Ridge has shown little regard for the potential health
15 risks that are created when regulations and codes are not administered in a safe and reliable manner.

16 The sewer and water systems should be regulated. Since we have no alternatives to have it operated by a
17 independent, unbiased company, Folsom Ridge should be regulated with stringent Commission control and
18 conditions, considering Folsom Ridge's past history of government violations.

19 Many homeowners on Big Island have contracts to connect to the system without mention that membership
20 would be a requirement. A 393 non profit corporation could create unnecessary liability, many civil
21 questions and possible civil suits. This could be a very expensive alternatives for the members of the 393
22 corporation. There is only one solution to the management and operation of the system: certification with
23 conditions of the applicant BI Water and Sewer Co. Inc.