

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 Hearing
6 February 28, 2006
7 Jefferson City, Missouri
8 Volume 5
9
9 Cathy J. Orler,)
))
10 Complainant,)
))
11 v.) Case No. WC-2006-0082
) et al.
12 Folsom Ridge, LLC, Owing and)
))
13 Controlling the Big Island)
))
14 Homeowners Association,)
))
15 Respondent.)
))
16
15 In the Matter of the Application)
16 of Folsom Ridge, LLC, and Big)
))
17 Island Homeowners Water and Sewer)
))
18 Association, Inc. For an Order)
))
19 Authorizing the Transfer and) Case No. WO-2007-0277
))
20 Assignment of Certain Water and)
))
19 Sewer Assets to Big Island Water)
))
20 Company and Big Island Sewer)
))
21 Company, and in Connection)
))
22 Therewith Certain Other Related)
))
23 Transactions.)
))
24
21 HAROLD STEARLEY, Presiding,
REGULATORY LAW JUDGE.
22 JEFF DAVIS, Chairman,
CONNIE MURRAY,
23 STEVE GAW,
ROBERT M. CLAYTON,
24 LINWARD "LIN" APPLING,
COMMISSIONERS.
25

1 REPORTED BY:

2 KELLENE K. FEDDERSEN, CSR, RPR, CCR
3 MIDWEST LITIGATION SERVICES

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1 P R O C E E D I N G S

2 JUDGE STEARLEY: Let's bring this hearing
3 this morning to order. Good morning. Today is Wednesday,
4 February 28th, 2007, and we are here for combined
5 evidentiary hearings in Case No. WC-2006-0082, et al,
6 Cathy J. Orler vs. Folsom Ridge, LLC and Big Island
7 Homeowners Association Water and Sewer Association,
8 Incorporated, f/k/a Big Island Homeowners Association, and
9 Case No. WO-2007-0277, in the matter of the application of
10 Folsom Ridge, LLC and Big Island Homeowners Water and
11 Sewer Association, Incorporated for an order authorizing
12 the transfer and assignment of certain water and sewer
13 assets to Big Island Water Company and Big Island Sewer
14 Company and, in connection therewith, certain other
15 related transactions.

16 My name is Harold Stearley. I'm the
17 Regulatory Law Judge presiding over this hearing. While
18 the hearings in these cases have been combined, I note
19 that the cases have not been consolidated. Our court
20 reporter this morning is Kellene Feddersen. And we will
21 begin by taking entries of appearance, beginning with the
22 Staff.

23 MR. THOMPSON: Good morning, your Honor.
24 Kevin Thompson for the Staff of the Missouri Public
25 Service Commission, address Post Office Box 360, Jefferson

1 City, Missouri 65102.

2 JUDGE STEARLEY: Thank you, Mr. Thompson.

3 And the Office of the Public Counsel?

4 MR. MILLS: On behalf of the Office of the
5 Public Counsel and the public, my name is Lewis Mills. My
6 address is Post Office Box 2239, Jefferson City, Missouri,
7 65102.

8 JUDGE STEARLEY: All right. Folsom Ridge,
9 LLC?

10 MR. COMLEY: Good morning, Judge Stearley.
11 Let the record reflect the entry of appearance of Mark W.
12 Comley, Newman, Comley & Ruth, 601 Monroe Street,
13 Suite 301, Jefferson City, Missouri 65101. And to my left
14 let me introduce once more Charles E. McElyea, Phillips,
15 McElyea, Carpenter & Welch, PC, 85 Court Circle, P.O.
16 Box 559 Camdenton, Missouri 65020, both of us representing
17 and appearing on behalf of Folsom Ridge, LLC and Big
18 Island Homeowners Water and Sewer Association, Inc. Thank
19 you.

20 JUDGE STEARLEY: Thank you, Mr. Comley.
21 Mr. Comley, how would you wish us to refer to your party
22 today? We have a number of kind of companies here, and
23 I'd like to avoid confusion. Would you like us to just
24 refer to you as the association or Folsom Ridge?

25 MR. COMLEY: Folsom Ridge I think is the

1 way I will refer to the limited liability company, and I
2 agree with you, the association would be a good
3 abbreviation for the other Respondent and other Applicant.

4 JUDGE STEARLEY: All right. Thank you,
5 Mr. Comley. For Big Island Water Company and Big Island
6 Sewer Cap.

7 MS. HOLSTEAD: Your Honor, my name is
8 Pamela Holstead, and I am the attorney representing Big
9 Island Water Company and Big Island Sewer Company. My
10 address 3458 Big Island Drive, Roach, Missouri 65787.

11 JUDGE STEARLEY: Thank you, Ms. Holstead.
12 Cathy J. Orlor?

13 MS. ORLER: My name is Cathy Orlor.

14 JUDGE STEARLEY: Please turn on your
15 microphone, and I'll ask you-all to please try to use your
16 microphones throughout the entire proceedings. It helps
17 with our recording.

18 MS. ORLER: Cathy Orlor, 3252 Big Island
19 Drive, Roach, Missouri 65787, Complainant.

20 JUDGE STEARLEY: Thank you, Ms. Orlor.
21 Benjamin D. Pugh?

22 MR. PUGH: My name is Benjamin D. Pugh,
23 1780 Big Island Drive, Roach, Missouri 65787.

24 JUDGE STEARLEY: Thank you, Mr. Pugh.
25 Cindy Fortney?

1 MS. FORTNEY: Cindy Fortney, 3298 Big
2 Island Drive, Roach, Missouri, Complainant.

3 JUDGE STEARLEY: Thank you-all very much.
4 I do have a list of intervenors who have come into the
5 transfer case. While it doesn't appear --

6 MS. ORLER: There's another individual.

7 JUDGE STEARLEY: While it doesn't appear we
8 have all of them, I'm going to go through this list of
9 names and see who we do have present here. Stan Temares?

10 MR. TEMARES: Yes, your Honor. That's me.

11 JUDGE STEARLEY: If you would please enter
12 your appearance.

13 MR. TEMARES: Yes. My name is Stan
14 Temares, 1836 Big Island Drive, Roach, Missouri 65787,
15 Complainant.

16 JUDGE STEARLEY: Thank you, Mr. Temares.
17 Ben F. Wier? Let the record reflect that Mr. Wier is not
18 present.

19 Joseph Schroeder? Let the record reflect
20 that Joseph Schroeder is not present.

21 Judy Kenter? Let the record reflect that
22 Judy Kenter is not present.

23 Dean Leon Fortney. Let the record reflect
24 that Mr. Fortney is not present.

25 Fran Wiest? Let the record reflect that

1 Ms. Wiest is not present.

2 Donald J. Wiest? Let the record reflect
3 that Mr. Wiest is not present.

4 Jerry And Mary Mayer? Let the record
5 reflect that the Mayers are not present.

6 Tom and Sally Thorpe? Let the record
7 reflect that the Thorpes are not present.

8 Bernadette Sears? Let the record reflect
9 that Ms. Sears is not present.

10 Sherry Fields? Let the record reflect that
11 Ms. Shields is not present.

12 Arthur W. Wilson -- or Nelson? Excuse me.
13 Let the record reflect Mr. Nelson is not present.

14 And William T. Foley, II? And let the
15 record reflect that Mr. Foley is not present also.

16 All right. I do want to remind all the
17 people present today to please have all cell phones,
18 Blackberrys, electronic devices please turned off in the
19 hearing room as they can interfere with our recording and
20 webcasting.

21 There's a number of things I want to
22 initially go over with the parties. We are going to be
23 premarking exhibits. I'm not sure as to the volume of
24 exhibits we may have this morning, and so I was asking the
25 parties, I know our witness list today includes four

1 witnesses if I'm correct, Cathy Orlor, Benjamin Pugh,
2 Cindy Fortney and Rick Rusaw; is that correct?

3 MR. THOMPSON: Yes, your Honor.

4 MR. COMLEY: Yes, your Honor.

5 JUDGE STEARLEY: Would you like to premark
6 exhibits just pertaining to those four witnesses this
7 morning or are you wanting to premark all of your exhibits
8 for the entire case?

9 MR. COMLEY: My idea was to go ahead and
10 premark the testimony of the witnesses and get that chore
11 out of the way. I do have the application I would like to
12 mark as an exhibit and have an opportunity to offer it
13 into evidence. Although I think it probably could be
14 officially noticed, I thought it would be appropriate to
15 have it ready for reference. Aside from those, I don't
16 have any others that I would think about premarking at
17 this time.

18 JUDGE STEARLEY: I think we'll just go
19 ahead and premark exhibits that will be pertinent for
20 today's testimony, then, that you'd like to enter, and
21 then as we move on throughout the days and have other
22 witnesses, we can begin each day with premarking their
23 testimony, et cetera, if that's acceptable to the parties.

24 And we're going to have opening statements
25 this morning. I believe we're going to start with Folsom

1 Ridge and the Association, followed by Staff, OPC, Big
2 Island Water and Big Island Sewer Company, Cathy J. Orler,
3 Benjamin D. Pugh and Cindy Fortney. Have I got the order
4 correct?

5 I wanted to ask the parties at this time,
6 we have kind of a unique situation, we have these two
7 cases that we're hearing together. Normally in complaint
8 cases we might do closing arguments. In a transfer case
9 we may take post-hearing briefs. Do the parties have
10 preferences on closing arguments versus briefs in this
11 matter?

12 MR. THOMPSON: Staff moves for closing
13 arguments, your Honor.

14 JUDGE STEARLEY: In both matters? With
15 regard to both matters?

16 MR. THOMPSON: With regard to both matters,
17 yes.

18 MR. MILLS: I have no objection to that.

19 MS. ORLER: We would agree, Complainants.

20 MS. HOLSTEAD: We are in agreement, your
21 Honor.

22 MR. COMLEY: We would agree to closing
23 arguments at the end of the case.

24 JUDGE STEARLEY: Very well. We'll go with
25 closing arguments for both matters.

1 As witnesses take the stand today, I know
2 we have a number of pro se parties here, and as they will
3 see, normally when we have attorneys presenting witnesses,
4 they ask them a series of foundational questions prior to
5 the offering of their testimony. Since pro se parties
6 have no counsel, I'll be the person asking those
7 questions, and I think you'll catch on quite quickly to
8 how the proceedings are going to be. But if at any time
9 you have any questions while you are on the stand, please
10 direct them to me.

11 Once the documentary evidence is offered
12 into the record, we will hear objections on those, and the
13 party offering the evidence will have an opportunity to
14 respond to those objections. This hearing is a little bit
15 different, as I mentioned, because we have two cases. So,
16 for example, on objections to relevance on an item of
17 testimony, I may have to rule it's relevant in one case
18 but not the other. So if the parties are making their
19 objections, I'd like for them to please make them clear if
20 they're objecting to their admission in the complaint
21 case, transfer case or both.

22 And for all the witnesses that will be
23 testifying today, I want you to particularly pay attention
24 to the questions that are being asked to you and answer
25 only those questions. You may receive questions from the

1 attorneys. You may receive questions from the
2 Commissioners or myself. Please listen carefully and
3 answer only the question that is asked. If there are
4 follow-up questions that the parties wish to ask, they
5 will ask them.

6 So, for example, if you receive a question
7 that can be answered as a yes or a no question, your
8 answer should be yes, no, maybe, sometimes or I don't
9 know. Please do not continue on with a narrative answer
10 after that answer. Opposing counsel is free to register
11 an objection to any testimony beyond the answer of the
12 question that is asked, and upon request any comments made
13 after that will be stricken from the record.

14 Are there any questions about any of the
15 matters I've just gone over? Okay. Then --

16 MR. THOMPSON: Your Honor, I have a couple
17 matters if I could bring to your attention real quick.

18 JUDGE STEARLEY: Yes, by all means,
19 Mr. Thompson.

20 MR. THOMPSON: First of all, when you were
21 giving the list of opening, the order of opening, you did
22 not mention Mr. Temares.

23 JUDGE STEARLEY: You're quite correct. I
24 wasn't sure which number of parties we would have
25 appearing today. We could have Mr. Temares follow Cindy

1 Fortney.

2 MR. THOMPSON: Thank you, your Honor. The
3 other thing is, when I put together the proposed order of
4 cross, I neglected to include Big Island Water Company and
5 Big Island Sewer Company. I would suggest that they
6 should inquire right after Staff with respect to
7 Complainants' witnesses.

8 JUDGE STEARLEY: I noted that omission, and
9 I agree completely.

10 MR. THOMPSON: I would suggest that we
11 follow the same order for their witness as we would for
12 the company's witnesses. And with respect to Staff's
13 witnesses, they could inquire right after the company.

14 JUDGE STEARLEY: I agree. And given the
15 number of parties, I will have counsel hold me accountable
16 for following the proper order on that.

17 MR. THOMPSON: Thank you, your Honor.

18 JUDGE STEARLEY: Thank you. Are there any
19 other preliminary matters we need to address at this time?

20 MR. COMLEY: One more time, could we go
21 through how the order of cross is going to be done now
22 that we've added the 393 companies? On Complainants'
23 witnesses, cross would be for Big Island Water and Sewer
24 when.

25 MR. THOMPSON: Right after Staff and just

1 before Respondents.

2 JUDGE STEARLEY: Right. Right after Staff,
3 Folsom Ridge, and the Association will go last.

4 MR. COMLEY: And on company's witnesses, it
5 would be when?

6 MR. THOMPSON: Well, good point. They
7 could be first. And on their witnesses, company should
8 probably go first.

9 MR. COMLEY: Thank you.

10 MR. THOMPSON: Thank you, Mr. Comley.

11 JUDGE STEARLEY: Okay. So for Mr. Rusaw
12 today for cross-examination, I have Big Island Water and
13 Sewer Company will go first, followed by Staff, OPC and
14 then Folsom Ridge and the Association. Well, pardon me.

15 MR. THOMPSON: Then the Complainants.

16 JUDGE STEARLEY: Yes, the Complainants.

17 MR. THOMPSON: Thank you, your Honor.

18 JUDGE STEARLEY: Thank you. Are there any
19 other preliminary matters we need to address at this time?

20 MR. THOMPSON: None from Staff.

21 JUDGE STEARLEY: Okay. We will take a
22 short intermission at this point while I notify the
23 Commissioners that we're ready for opening statements.

24 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

25 (EXHIBIT NOS. 1 THROUGH 20 WERE MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2 JUDGE STEARLEY: We're back on the record,
3 and we're going to begin with opening statements, starting
4 with Folsom Ridge and the Association, Mr. Comley.

5 MR. COMLEY: May it please the Commission?
6 Judge Stearley, thank you very much. My name is Mark
7 Comley. In conjunction with Mr. Charles McElyea, who is
8 at counsel table behind me, we represent Folsom Ridge, LLC
9 and the Big Island Homeowners Water and Sewer Association,
10 Inc. Both are Applicants in Case No. WO-2007-277, which I
11 will probably refer to as the asset transfer case, and
12 both are Respondents in WC-2006-0082, which are the
13 consolidated complaint cases.

14 Before the Commissioners came down, Judge
15 Stearley and I visited about how we were going to refer to
16 the parties in this for ease and convenience, and with
17 respect to the Big Island Homeowners Water and Sewer
18 Association, Inc., I'm going to be referring to that as
19 the Association probably throughout the proceeding, and I
20 hope that doesn't confuse anyone. With respect to Folsom
21 Ridge, LLC, it's probably easiest just to refer to that as
22 Folsom or Folsom Ridge.

23 Both of the cases before you involve
24 wastewater and water distribution facilities that are
25 constructed and operational on Big Island, Lake of the

1 Ozarks, a community not far from Roach, Missouri. Those
2 facilities have been in place since the year 2000, if not
3 for a time just before then.

4 Here is what we expect the evidence will
5 show in this case: Folsom Ridge, LLC is a Colorado based
6 limited liability company, and it was formed in 1997 to
7 engage in the business of owning and developing property
8 in the state of Missouri. In pursuit of that purpose,
9 Folsom Ridge purchased all or nearly all of undeveloped
10 Big Island. Folsom Ridge also purchased an adjacent 190
11 acres.

12 Shortly after purchasing that property,
13 Folsom proceeded to install necessary infrastructure to
14 develop the land. Folsom platted and replatted portions
15 of that property, sold homes and lots, and it is currently
16 building villas in what is called Phase 1 of the Big
17 Island Planned Unit Development. That's kind of an
18 overview.

19 Here's some more detail. Folsom Ridge is
20 concentrated entirely on its development in Big Island and
21 the adjacent 190 acres I mentioned. Those 190 acres, now
22 known as Island View Estates, have been subdivided into 35
23 3-acre to 12-acre building sites to be sold for custom
24 homes. The roads are paved and the lots are ready to
25 sell.

1 The project itself, what I've just
2 described, was first brought to the attention of Folsom by
3 one of its members, a man named Mr. David Lees. He will
4 be a person we hear about in this hearing quite often, I
5 suspect. The LLC's first purchase of property was in
6 April of 1998, and that was the initial purchase of the
7 350 acres comprising the undeveloped part of the island.
8 It platted 200 lots, and since that time Folsom has
9 platted more lots.

10 The development has changed over time.
11 At present, the intention is to create a community that
12 has full access to the recreational opportunities of the
13 Lake but also preserves the natural environment nearby.
14 The design includes preservation of native vegetation but
15 also the planting of native species that are common to the
16 area.

17 Homes are going to be built so that they
18 are like woodland homes. They're going to be built so
19 that the natural vegetation is minimally disturbed. The
20 idea is to reduce congestion on the shoreline, so that
21 there will be use of common docks rather than a dock for
22 each home. The idea is to create a master plan
23 residential community that fits into the character and the
24 beauty of the area.

25 Barbara Brunk, who will be one of the

1 witnesses for Folsom Ridge, who is a consultant to that
2 company, had a series of photographs attached to her
3 direct testimony, and she produced a Power Point for
4 you-all, and there are some slides that are connected to
5 that. And through the modern convenience that Daniel, the
6 IT person, has tried to help me work, I think I'm going to
7 be able to show these to you on this rather elaborate
8 piece of equipment. I thought we'd go through just to
9 give you an idea of where we're talking.

10 Ms. Brunk had these photographs and added
11 captions to the photographs. Her description's of the
12 photographs in her testimony. I think these were
13 photographs that were given to the Camden County Planning
14 and Zoning Commission. I have a laser, and I can -- if I
15 can keep from shaking -- I may not be able to do this very
16 well.

17 The Big Island area is right here. I think
18 Mr. Pugh's house would be down in this area, but he can
19 correct me.

20 MR. PUGH: That's pretty close.

21 MR. COMLEY: And there is a gentleman that
22 lives in this area that I think would be known to the
23 Commission. His name is John Ashcroft. He lives there
24 from time to time. I think he still is a property owner
25 in this area.

1 COMMISSIONER CLAYTON: Is he a party to
2 this case, Mr. Comley?

3 MR. COMLEY: I did not see him enter his
4 appearance, and his former employer has not either, and
5 I'm kind of glad for that.

6 Anyway, you can see this is another aerial
7 view of the island looking south, and the planned unit
8 development area is on the right side of the photo.

9 The next photo is a photograph looking
10 north at Big Island. The Villas, which are community
11 docks, the pool and existing homes owned by Folsom Ridge
12 are also shown.

13 The next photo is an aerial view looking at
14 the western shoreline of the island where the Villas,
15 community docks and existing homes owned by Folsom Ridge
16 can be seen.

17 The next photo is an aerial view looking
18 north at the Villas, the community docks. The sand filter
19 involved in the wastewater treatment facility we'll be
20 talking about is at the upper right-hand part of this,
21 somewhere in this vicinity (indicating).

22 This is a view looking west to the
23 community docks. The next photo shows the community pool.
24 That was under construction, and I'm not sure whether that
25 construction's been completed, but at the time of this

1 photo was under construction.

2 The next photo is a model home and the
3 sales office for the development. The next photo is
4 another photo of a model home and sales office. The next
5 photo again is a view of a model home for the development.
6 The next photo shows an entrance to the model homes. The
7 next photo shows the furnished interior of the model home,
8 as does the next photo.

9 The photo now shows a family room in the
10 furnished model home and location of the sales office.
11 The next photo shows a view from the lake of the furnished
12 model home. And that concludes the slide show.

13 The slides again were prepared by Folsom
14 Ridge and submitted to the Camden County zoning authority
15 in 2004 as part of the company's preliminary planned unit
16 development application. The steps for local land use
17 approval were followed by Folsom Ridge and were tied in
18 large measure to the plan of development, and that's
19 something that has developed over time.

20 Land use regulations were not adopted by
21 Camden County until 2004. Prior to that time, land could
22 be subdivided without advance review and approval of
23 Camden County. The subdivisions done by Folsom Ridge did
24 precede the -- some of the subdivision platting done by
25 Folsom Ridge did precede those rules.

1 At the time Camden County's land use
2 regulations were proposed, Folsom did prepare a master
3 plan for the island to illustrate the intent for
4 development over time, and Camden County zoned Big Island
5 for single family residential in 2004. Folsom Ridge
6 platted the center of the island prior to adoption of the
7 County's land use regulations, as I admitted, but the
8 planned unit development was prepared and processed using
9 the rules and regulations of the Camden County zoning
10 authority and using baseline density as the starting
11 point.

12 The application for approval of the PUD
13 plan was submitted to Camden County in November of 2004.
14 It was approved in January of 2005. Representatives of
15 the company met with residents on Big Island throughout
16 the fall of 2004 and revised the plans to respond to their
17 concerns. There was active involvement by residents. The
18 PUD was amended in 2006 to add a location for the pool and
19 for a play area and two other existing homes.

20 Phase 1 of the final plat was recorded in
21 September 2006. And, in addition, Folsom Ridge has
22 prepared and processed a preliminary plat for Island View
23 Estates. Those were the 190 acres I mentioned earlier.
24 And that final plat was recorded in 2006 as well.

25 Now, the structures that have been added.

1 The infrastructure features that have been part of this
2 development include the utilities we'll be talking about,
3 the access drives, the docks, the marina site, parking
4 area and pool. Approximately 10 percent of that
5 development is completed. There are remaining phases
6 which will include extension of the water and sewer
7 system, and permit applications for those extensions have
8 been approved. And the expansion of the wastewater
9 treatment facility in connection with this ongoing
10 development I think has been fully constructed and is now
11 waiting final inspection by DNR.

12 Now let me tell you about the systems
13 themselves and what they are. First, Folsom Ridge relied
14 on two design engineers. First was Lake Professional
15 Engineering Services, who was involved in the initial
16 design of both systems. Krehbiel Engineering, Inc. was
17 involved in the relocation of a water line, which we'll be
18 talking more about in a minute, and the design of
19 extensions and improvements to the system. Mr. Krehbiel,
20 an engineer of that firm, will be testifying in this case.

21 Before designing a final design for the
22 water and sewer systems, Folsom Ridge did a general survey
23 of the existing homeowners on the island. It was
24 determined that there was an interest in future connection
25 to a central water and central sewer system. Many of the

1 existing homes on the island are built on 50-foot-wide
2 lots and are served by individual wells and septic tanks.
3 Folsom Ridge decided to include provision for those
4 existing homes so that they could hook up as an
5 alternative if their individual systems would fail or need
6 to be replaced.

7 The water system, speaking specifically
8 about it, is comprised of these components: There's a
9 water supply well, three ground storage tanks, a booster
10 pumping system and distribution system. The pumping
11 equipment delivers a flow of approximately 140 gallons per
12 minute. This pump is adequate to serve 320 residential Al
13 customers.

14 There are three 12-foot non-pressure
15 storage tanks which store approximately 12,000 to 15,000
16 gallons combined. The ground storage tanks were designed
17 to serve 80 residential customers. Those are in the
18 process of being replaced with a stand pipe. The stand
19 pipe is designed to serve 320 residential customers.

20 The distribution system consists of
21 approximately two miles of four-inch Schedule 40 PVC pipe
22 that form a loop in the service area. The distribution
23 system is adequately sized to serve 320 residential
24 customers. I think you can see that overall the idea is
25 to size this system so that at maximum built out it will

1 be able to serve 320 residential customers.

2 Regarding the sewer system, that system is
3 comprised of a septic tank effluent pumping collection
4 system. This is referred to as a STEP collection system.
5 It also has a recirculating sand filter treatment
6 facility. Wastewater from each home is treated at each
7 individual home with a septic tank. The homeowner's
8 septic tank is integral to the treatment of the wastewater
9 on the island.

10 The settling that first occurs in the
11 septic tank eliminates much of the solid matter from the
12 wastewater, and the gray water then is pumped to
13 collection lines from the septic tank. In the septic
14 tanks approved for this system, a filter is installed
15 although the effluent discharges into a pump vault.

16 From the pump vault the effluent is
17 directed to the collection line, which is generally at a
18 higher elevation. In other words, there's pressure
19 pushing the effluent toward the collection line. Those
20 collection lines then carry the effluent to the
21 recirculating sand filter where the water is treated to
22 meet DNR regulations.

23 The original treatment facility was
24 designed to treat 22,525 gallons per day. The addition
25 that was recently constructed will provide for treatment

1 of 41,625 gallons per day.

2 During the construction of these
3 facilities, the Department of Natural Resources issued
4 several Notices of Violation. These have been brought out
5 to the attention by the Complainants. One of those
6 violations generated a Settlement Agreement with the
7 enforcement arm of the Missouri Department of Natural
8 Resources.

9 That Settlement Agreement concerned the
10 relocation of a water line in a manner that complied with
11 the horizontal separation regulations of the Department.
12 The lines had been installed and buried too closely
13 together. The water line and sewer line had been buried
14 in a common trench, but they had not complied with the
15 regulations that DNR had established for those kinds of
16 common trench sharing features.

17 An investigation, which was prompted by
18 some of the Complainants here today, led to the discovery
19 of the improper installation. Folsom Ridge complied fully
20 with the Settlement Agreement, and that file has been
21 closed by DNR. Construction of those facilities has been
22 inspected, and there have been no construction
23 deficiencies noted.

24 Construction of the water lines and sewer
25 lines was under the supervision and oversight of Mr. Lees,

1 Mr. David Lees, somebody I mentioned already. He was one
2 of the members of Folsom Ridge. Mr. Lees was the man in
3 the field for this development. Up until Mr. Lees'
4 departure from Folsom Ridge in April of 2001, the other
5 members, Mr. Reginald Golden and Mr. Rick Rusaw, the
6 latter of which will be testifying in this case, had been
7 simply investor members and had relied on Mr. Lees for the
8 legwork needed at the site and its local administration.

9 Folsom Ridge has taken the position in
10 these cases and also in federal court where litigation is
11 now pending against Mr. Lees, filed by Folsom Ridge, that
12 he is responsible for the incorrect installation of these
13 facilities and should respond in damages to the company.
14 Mr. Lees has not been involved in the management, not
15 involved in any of the operations of this company since
16 April of 2001.

17 The systems have been operational since
18 2000, as I mentioned. As far as operational
19 characteristics and compliance, there was a citation by
20 DNR for a total residual chlorine issue in one reporting
21 cycle. Besides that, there have no Notices of Violation
22 on effluent limitations concerning the treatment plant or
23 any Notices of Violations pertaining to the operational
24 characteristics of the water system.

25 As of this date, DNR considers the systems

1 in compliance with all of its regulations. Again, it has
2 closed out the file on the Settlement Agreement, and there
3 are no violations noted in its current operations.

4 I need to visit with you about the
5 covenants and restrictions and the association itself that
6 are a part of this case. In order to provide for uniform
7 governance of the water and sewer systems that were
8 available to Big Island residents, Folsom Ridge developed
9 a set of recorded covenants and restrictions that would
10 apply to property sold by Folsom Ridge to new owners and
11 to existing owners who voluntarily agreed to the terms of
12 the covenants.

13 The covenants and restrictions generally
14 govern the connection to and use of the water and sewer
15 system on the island. The duties and responsibilities of
16 Big Island Homeowners Association, the Association, are
17 set out in those covenants and conditions. The
18 Association has been in existence since July of 1998. The
19 last and current restatement of those covenants and
20 restrictions is attached to Ms. Brunk's testimony as BB
21 Schedule 6.

22 The Association was created to offer water
23 and sewer service to its members and only its members. It
24 was not created to offer service to anyone else. Every
25 household connected to either system has been offered

1 membership in the Association. No household connected to
2 either system has been denied an opportunity to become a
3 member in the Association. To become a member in the
4 Association, some property owners, not all, are expected
5 to agree to or ratify the amended and restated covenants
6 and conditions.

7 The word ratification will probably be used
8 quite a bit during the course of the hearing. That is the
9 term that Folsom Ridge has applied and I think the other
10 parties have applied to that process. Those who have to
11 ratify are generally the property owners who have homes
12 that were not covered originally by the first filing of
13 those covenants. There was a land area described in
14 there. People that were not in that land area would be
15 expected to ratify the covenants and conditions to gain
16 service from the Association.

17 Again, the covenants and conditions set out
18 the rights and duties of each owner connected to the
19 system. Some households connected and receiving service
20 from the Association have refused to become members. The
21 Association has had no control over that decision. The
22 Association has preferred to keep these customers
23 connected to the system because there are, of course,
24 environmental and public health benefits involved, and
25 basically because the Association wants them to have

1 service.

2 Although there are homeowners connected who
3 have not formally accepted the terms of the covenants and
4 conditions, and I think this is an important point, the
5 Association has nonetheless treated them like members and
6 given them a voice at meetings of the membership, and it
7 is up to them when they should become an official voting
8 member.

9 Their votes at the meetings are not part of
10 official tallies because they are not members, but
11 nonetheless, they have the opportunity to participate in
12 matters of management and voice concerns about the
13 administration of the Association.

14 The Association is a not-for-profit
15 company -- corporation. Excuse me. It issues no stock.
16 Folsom Ridge has no ownership interest in the Association.
17 Folsom Ridge is a member of the Association by virtue of
18 its ownership of lots covered by the declaration of
19 covenants and restrictions. The Association has never
20 declared a dividend to Folsom or any member.

21 The Association is strictly not for profit.
22 It was established for gain, not for gain to Folsom Ridge
23 but for gain to the membership. The concept was for
24 members to have an interest in the operation, ownership
25 and control of each system, and that would be a benefit to

1 them. It's very much like a cooperative. It's not a
2 cooperative, but the objective was to create it like that.

3 The Association does not want to offer
4 water and sewer service to the public generally. It has
5 never been its intention. Just those persons whose
6 property is proximate to the water mains and wastewater
7 collection mains installed for those systems and who have
8 paid the appropriate fees for tap-ons and who have agreed
9 to the covenants and conditions.

10 There are currently 60 customers receiving
11 service and 49 customers receiving water service. That
12 will differ slightly from the testimony we filed prefiled,
13 and those corrections will be made on the stand as we
14 present our testimony. We took a longer look at the
15 connection that we had, and we found out that we had one
16 more customer than we thought -- we lacked one customer,
17 had one less than we thought on the sewer side and one
18 more than we had on the water.

19 By the count we have, there are 33
20 households who have paid a connection or tap fee for the
21 right to connect but who have not yet connected. Some of
22 the customers served by the system have not ratified the
23 covenants and conditions and technically do not consider
24 themselves members of the Association.

25 The contract operator for the systems at

1 this time is Mr. Michael McDuffey of Lake Ozark Water and
2 Sewer. His company is under contract for the operation
3 and maintenance of both systems. I will mention this now
4 but plan to refer to this back again later in my remarks.
5 Mr. McDuffey's company provides all periodic maintenance
6 services, testing services and reporting required.
7 Furthermore, his company has agreed to continue those
8 duties and responsibilities under the contract that is
9 referred to in the application and in our testimony for
10 the transfer of the facilities. And I can talk more about
11 that in a minute.

12 As far as rates, the Association charges
13 \$15 per month for sewer service and \$10 per month for
14 water service. Members of the Association who are not
15 connected to the systems are billed a charge of \$5 per
16 month for water and \$5 per month for sewer, which is a
17 maintenance or availability charge.

18 These latter charges again are not for
19 utility services, but rather cover the cost for making
20 those facilities available when connection is going to
21 happen for those folks. The rates have been billed
22 quarterly, but they are now on a monthly billing basis.

23 That is what's currently operating at Big
24 Island. What the Commission has before it now is an
25 application to change that. And with respect to that

1 application, I think I should bring out the highlights for
2 the Commission at this time. First, the object of the
3 application is to settle the controversy that's raised by
4 the Complainants. We need to end the arguments over the
5 manner by which water and sewer services are supplied on
6 this island.

7 The Commission's records will reflect that
8 Folsom Ridge earlier formed Bis Island Water and Sewer
9 Company and filed an application for a certificate in
10 Case No. WA -2006-0480. In that case, the Complainants,
11 several of them, I think all the ones represented here
12 anyway, intervened in that case and continued objections
13 to the formation of a regulated company.

14 It was during that proceeding that
15 residents receiving service on the island and others
16 expressed interest in locally owning and operating both
17 systems. And because of that interest, Folsom Ridge and
18 the Association were willing to pursue negotiations, and
19 they had ultimately agreed on the transfer.

20 In the Asset Transfer and Purchase
21 Agreement that's attached to the application, Folsom Ridge
22 and the Association are collectively the sellers, and the
23 two new nonprofit companies that have intervened in this
24 case represent the buyers. I refer to them as the
25 Section 393 companies or just simply the 393 companies,

1 and I hope that won't confuse you or the Commission,
2 anyone here or the Commission about that.

3 They were organized by local residents, as
4 I mentioned, and those residents include Ms. Holstead, who
5 is the attorney for those companies today.

6 Here's the highlights: Neither Folsom
7 Ridge or the Association will be affiliated with either
8 company. The 393 companies will be utterly independent of
9 Folsom Ridge or any developer. Also, the voting in the
10 new companies will be different from the right to vote in
11 the Association. The Association followed primarily a one
12 vote per lot rule.

13 The one vote per lot rule is something that
14 has been objectionable to the Staff of the Commission.
15 Whether that one vote per lot rule would trigger
16 jurisdiction of this Commission is still a matter in
17 dispute. The Association would say, no, it doesn't. I
18 think other parties would say it does.

19 But regarding voting in the new companies,
20 the one vote per lot rule is not going to be followed. It
21 will be one vote per customer. In this way, the 393
22 companies will be customer controlled. Folsom can vote,
23 but it can only vote as a customer.

24 The voting rights are set out in the bylaws
25 of the companies. Those bylaws were on the Office of

1 Public Counsel's website. My understanding is that they
2 will be offered as exhibits today.

3 The property and equipment transferred
4 pursuant to the agreement is comprehensive and is briefly
5 described in Mr. Rusaw's direct testimony. I'm not going
6 to repeat it for my opening remarks. But I will mention
7 that all accounts, accounts receivable and reserve
8 accounts related to the provision of water and sewer
9 service will be transferred.

10 And regarding the reserve account, my
11 understanding now is that the reserve account to be
12 transferred will be in a range. It could be between 7 and
13 \$10,000. Mr. William Hughes, an accountant who serves the
14 Association, is going to testify about that and I think
15 will have testimony on that current figure if the
16 Commission should inquire.

17 Another point. The assets under the
18 agreement are being transferred to the Assoc -- to the new
19 companies without any charge. There will be no
20 consideration for the assets themselves. There is a
21 provision in the agreement that the 393 companies have
22 agreed to pass on tap fees for certain pieces of property
23 that are near, proximate to wastewater lines and water
24 lines. They have not given a connection fee yet, but they
25 are near the lines.

1 If those people decide to connect, the
2 connection fee that had been charged in the past will be
3 charged to them and passed through to Folsom. The window
4 for that is only ten years, and I think you will notice
5 that this resembles some of the ten-year windows the
6 Commission has approved for construction in aid of --
7 excuse me -- contribution in aid of construction
8 surcharges for regulated companies.

9 The households subject to this are going to
10 be identified on Exhibit E to the agreement, and that
11 exhibit is just marked proprietary for now. It's still
12 under construction. The names and lot ownership of those
13 residents and homeowners we elected to keep undisclosed at
14 this time as a way of protecting their identity, and I --
15 and there's been no other exhibits supplied for that, but
16 I think we could do that if the Commission were to request
17 it. But that exhibit again is still under construction.
18 There are several other exhibits like that, too.

19 There's been concern addressed about the
20 residents who have already paid a tap fee but have not
21 connected. Under the proposal that is in front of the
22 Commission, those people will still have a right to
23 connect. That right to connect has been guaranteed by the
24 new companies. The 393 companies have agreed to assume
25 that obligation in their bylaws.

1 The next issue concerns main extensions.
2 There's still development in the area, but under the main
3 extension agreement that's attached to the agreement, the
4 developer would be responsible for all costs of those
5 improvements and expansions. The -- no extension will be
6 accepted by the 393 company unless approved by its
7 engineer or other qualified employee, agent or contractor.

8 Also, the extension agreement and the
9 extension will have to be done in conformity with the
10 bylaws of the company. Those bylaws are very
11 comprehensive. The specimen that was attached is for a
12 water company, a water extension rather, but the sewer
13 extension agreement would be substantially similar if not
14 identical.

15 The agreement is binding on successors and
16 assigned. If Folsom Ridge or the 393 companies were to
17 later merge or sell their interests, those that follow
18 would be bound by the agreement.

19 After the transfer of assets, the 393
20 companies would operate and maintain the systems and bill
21 and collect for the rates and charges for service. As I
22 mentioned previously, Mr. McDuffey's firm, the firm that
23 is currently under contract to operate and maintain the
24 systems and has done so, I think, ever since it was first
25 operational, will continue the job of contract operation

1 and maintenance. He has historically operated those
2 systems. he and his firm are highly qualified to perform
3 those tasks.

4 The Association has approved the transfer
5 of assets. Pursuant to a written notice, a special
6 meeting of the Association's membership was held
7 January 29, 2007. Votes were taken on a resolution to
8 approve the transfer either in person or by proxy, and the
9 resolution was adopted.

10 Late last evening, resolutions that were
11 late-filed exhibits to the application were filed with the
12 Commission. I think they will be referred to as
13 Exhibits 3 and 4. I have not brought separate copies of
14 those this morning. I can bring them if that is something
15 that the Commission would prefer to see. But the
16 resolutions of the membership of the LLC and the
17 membership of the Association have been filed as
18 late-filed exhibits.

19 The vote can be broken down in several
20 ways. The Association tabulated the vote by customers
21 actually connected to the systems, and as I mentioned,
22 there are a total of 60 that are connected and 48 --
23 excuse me -- 49 customers connected to the water system.
24 Of the customers connected to the systems, 50 voted in
25 favor of the resolution and 5 voted against, a total of 55

1 votes. The percentage in favor was around 82 percent.
2 There are 92 customers that are billed by the Association,
3 and of the customers billed, 70 voted in favor, 13 voted
4 against, and the percentage in favor was approximately
5 76 percent of the total billed.

6 The Association also tabulated the votes by
7 the number of owners of the property on the island.
8 According to the Association's records, there are
9 approximately 105 owners of property. Of those 105
10 owners, 73 voted in favor and 16 owners voted against.
11 The percentage in favor of the resolution approving the
12 transfer was 69 percent or more. A little bit more.

13 The existence of the complaints in the
14 WC-2006-0082 case definitely constitutes a shadow on the
15 property on the island, and as they continue, they will
16 lead to confusion about water and wastewater services
17 available there.

18 None of the existing customers of the
19 system will see a change in the manner in which service is
20 provided as a consequence of the closing and the asset
21 sale that's proposed in the asset sale application.
22 Mr. McDuffey, who has supplied a high standard of service,
23 will continue as the operator.

24 The rates for service will be less than
25 what was proposed by the Staff in the certificate case

1 that was recently dismissed, but they will be more than
2 what the Association is charging at this time.
3 Nonetheless, the position would be that they are
4 nonetheless very reasonable.

5 The persons connected to the systems after
6 the transfer will also be benefited by local management
7 and control. The percentages of affected customers and
8 homeowners on the island in favor of this transaction are
9 most indicative of the benefits to the public interest.

10 The Association and Folsom Ridge are
11 sponsoring the testimony of five witnesses. I've
12 mentioned Mr. Rusaw. He is president of the association
13 and also a member of Folsom Ridge. Mrs. Barb Brunk, who
14 is the manager of Resource Conservation Partners. That
15 company provides consulting services to Folsom Ridge and
16 its developments. Mr. Bill Hughes, the accountant for
17 Folsom Ridge, Mr. David Krehbiel of Krehbiel Consulting
18 Engineers, and Mr. Mike McDuffey, the contract operator
19 for the systems, will be appearing.

20 Also, the deposition of the Department of
21 Natural Resources was taken in the complaint cases.
22 Portions of that deposition will be quickly read into the
23 record as part of the hearing. Also, certain documents
24 have been requested from the custodian of records for DNR,
25 and the subpoena has asked that the custodian be here

1 tomorrow at one o'clock, but that is something we can
2 change if the hearing demands. I intend to have the
3 records identified then.

4 Because of the procedures that DNR told me
5 I needed to follow, I will not be able to have copies of
6 all those records at the time the custodian presents them.
7 So what I propose to do would be to have them taken and
8 then copied and brought back and formally admitted at that
9 point or formally offered at that point. We can work that
10 out.

11 In terms of relief, as a consequence of
12 this hearing, the Respondents in the complaint cases
13 propose the Commission determine that the Association's
14 operations are entirely lawful and are not subject to
15 regulation here. I'm not going to go into the legal
16 argument on that. In the Commission should find that
17 there's no jurisdiction, then it will not need to reach
18 the application case. Those merits would then be beyond
19 your reach.

20 If the Commission decides to review the
21 merits of the application for the asset transfer, then the
22 Applicants, Folsom Ridge and the Association along with
23 the 393 companies I have referred to already, would join
24 in requesting your finding that the transfer is in the
25 public interest and should be approved without any other

1 condition.

2 JUDGE STEARLEY: Thank you, Mr. Comley.

3 Are there questions from the Commissioners before you
4 conclude? Commissioner Murray?

5 COMMISSIONER MURRAY: I don't believe I
6 have any.

7 JUDGE STEARLEY: Commissioner Gaw?

8 COMMISSIONER GAW: I will come back after
9 Commissioner Clayton.

10 COMMISSIONER CLAYTON: Mr. Comley, just
11 before you leave, you've gone over a lot of material this
12 morning. I've been waiting for you to talk about this
13 jurisdictional issue, and then you said you weren't going
14 to go into it. I was kind of disappointed by that.

15 It is your client's position that this
16 Commission does not have jurisdiction over the entities
17 that are providing the service today; is that correct?

18 MR. COMLEY: That's our position.

19 COMMISSIONER CLAYTON: Okay. So your
20 application for transfer of the property is an in the
21 alternative type of pleading; is that correct?

22 MR. COMLEY: Exactly. I would label it as
23 a contingent application in the event that the Commission
24 should elect to exercise jurisdiction.

25 COMMISSIONER CLAYTON: Okay. So first and

1 foremost, your position is that we don't have jurisdiction
2 or the authority to take any action over your clients?

3 MR. COMLEY: Yes.

4 COMMISSIONER CLAYTON: Now, can you
5 identify for me the grounds that would establish why we do
6 not have jurisdiction? What criteria of the statute does
7 not apply to you that makes you not subject to our
8 jurisdiction?

9 MR. COMLEY: The statute itself talks about
10 sewer corporations that have been established and are
11 operating for gain. The cases that are interpreting that
12 particular section are very few, and those that do
13 indicate that if the association has not been charged with
14 offering services to the public, if it is in-- if it is
15 intended simply to offer services to its members and no
16 one else and is strictly a not-for-profit corporation,
17 having no intention of declaring any commission or any
18 kind of dividend, where people involved in the operations
19 are given a voice in operation and management, then there
20 is no sign that it is for gain. It is a non-regulatable
21 company.

22 COMMISSIONER CLAYTON: So the area that --
23 well, you've mentioned several things, and I want to be
24 clear on this. I'd like to create a list so that I can
25 track when all the other parties are up here. So it's

1 your client's position that they're not offering service
2 for gain?

3 MR. COMLEY: Exactly.

4 COMMISSIONER CLAYTON: And that that is an
5 integral part of the statute. Additionally, I think you
6 said that you're not holding service out to the entire
7 public; is that correct?

8 MR. COMLEY: Exactly.

9 COMMISSIONER CLAYTON: Now, on that
10 subject, will the evidence show -- and I appreciated your
11 presentation, your sales brochure on Folsom Ridge
12 development. It looks like a lovely place. But do your
13 clients own the entire island?

14 MR. COMLEY: No, they do not own the entire
15 island. No, they do not.

16 COMMISSIONER CLAYTON: Or did they at one
17 time before it was subdivided?

18 MR. COMLEY: I think the record will show
19 that there are existing homeowners on the island previous
20 to the purchases of property by Folsom Ridge. In fact, I
21 think Mr. Pugh will verify that he purchased ground on Big
22 Island in 1962.

23 MR. PUGH: That is correct.

24 MR. COMLEY: And there have been existing
25 homeowners on that island, including the gentleman that I

1 referred to that lived at the end of the island. He had a
2 place down there I know in 1980.

3 COMMISSIONER CLAYTON: I'd be interested to
4 hear what he had to say.

5 Who provides service to the owners that
6 were there on the island before the development?

7 MR. COMLEY: The testimony that we have
8 indicated that the existing homeowners were relying upon
9 individual wells and individualized septic facilities.

10 COMMISSIONER CLAYTON: Okay. So not -- not
11 providing a service for gain, not offering service to the
12 public, and you mentioned something else, I believe.

13 MR. COMLEY: The other thing I mentioned
14 was the Staff's feeling that the one vote per lot rule of
15 the Association would take it into Commission
16 jurisdiction. The other thing the Staff has mentioned is
17 that, and I think this is in Mr. Merciel's report, that it
18 offers services to non-members.

19 Our position on that is, first, Staff's
20 position can be derived from a case that was decided by
21 the Commission in 1993. It's called the Rocky Ridge Ranch
22 case. And the Commission concluded that it had
23 jurisdiction over homeowners associations offering service
24 to more than 25 units when the association offered service
25 outside its membership and the developer had more votes

1 and was in control of the association's management
2 administration by its votes.

3 Our position is that there is nothing in
4 the statute setting that out. That is a matter which is
5 not derived from the statutory text that gives the
6 Commission jurisdiction over the rates, rules, regulations
7 and practices of sewer and water corporations.

8 COMMISSIONER CLAYTON: Okay. Legally,
9 anything else that you want to bring up at this point?

10 MR. COMLEY: I can't think of anything
11 more. Because the issues list was something that was
12 decided yesterday, I have not fully prepared a closing
13 statement yet, and with leave of the Commission, I would
14 ask for another opportunity to revisit this question if
15 necessary, a little bit more in my closing argument.

16 COMMISSIONER CLAYTON: You'd have to come
17 up with it on the fly.

18 MR. COMLEY: I'll give it a shot. I have a
19 couple more days to look at it.

20 COMMISSIONER CLAYTON: Thank you very much.

21 JUDGE STEARLEY: Commissioner Appling?

22 COMMISSIONER APPLING: Steve can proceed.

23 COMMISSIONER GAW: Go ahead.

24 COMMISSIONER APPLING: Good morning,
25 Mr. Comley.

1 MR. COMLEY: Good morning, Commissioner.

2 COMMISSIONER APPLING: How you doing?

3 MR. COMLEY: I'm fine.

4 COMMISSIONER APPLING: I spent all day
5 yesterday afternoon reading all the material and the
6 issues and all that and listening to what you've said this
7 morning. Can you take three to five minutes and tell me
8 as close as you can what your clients is looking for in
9 this case?

10 I'm going to have to make a vote here
11 sooner or later, and I want to track fully and follow your
12 witnesses and everybody so that I can render my best
13 decision for you or against you. Okay?

14 MR. COMLEY: It may not take three to five
15 minutes. I think pretty much condensed to just a
16 thumbnail version, Commissioner Appling, we want the
17 Commission to find and determine that the Association's
18 have been lawful to date. That's what we want. If that's
19 the case, then you won't need to get to the application
20 for the transfer of assets. The only reason that
21 application has been filed is because there had been a
22 Commission order indicating that it may have had probable
23 jurisdiction.

24 Alternatively, if the Commission cannot
25 conclude that it lacks jurisdiction, we would want you to

1 approve the transfer of assets involved so that the 393
2 companies I've referred can start this and start operating
3 the systems as of April 1, 2007. As part of that
4 decision, our point would be that with the application and
5 the transfer of assets, the complaints and the issues
6 involved in the complaints have been mooted, and that the
7 complaints can be dismissed on that basis.

8 COMMISSIONER APPLING: Okay. Thank you,
9 sir.

10 JUDGE STEARLEY: Commissioner Gaw?

11 COMMISSIONER GAW: Thank you, Judge. I
12 want to get back to this jurisdiction question. Remind
13 me, if you would, what statute that you're relying on.

14 MR. COMLEY: The definitions sections in
15 Chapter 386. As I recall, Mr. Thompson did accurately
16 cite those. I think I may have a copy here. We're
17 looking at 386.020, and definitions that I think are in
18 subparagraph 48 and 58.

19 JUDGE STEARLEY: 42, I believe, Mr. Comley.

20 MR. COMLEY: Excuse me.

21 COMMISSIONER GAW: Well, 48 and 58 as well
22 as 42.

23 JUDGE STEARLEY: And 42.

24 MR. COMLEY: 42 would be the definition of
25 a public utility. I think that's what that was. Yes.

1 Those definitions in turn are part of the Commission's
2 regulatory jurisdiction in Chapter 393, and I cannot
3 recall the exact statute in which they appear first.

4 COMMISSIONER GAW: Okay. And the
5 organization of this corporation again is under which
6 section?

7 MR. COMLEY: The Association I think is
8 organized under Chapter 355, which is the Missouri
9 not-for-profit corporation act.

10 COMMISSIONER GAW: And the services it
11 provides, water?

12 MR. COMLEY: Water and sewer.

13 COMMISSIONER GAW: The language in 58 and
14 48 are not exactly the same, are they?

15 MR. COMLEY: I would imagine that in 48
16 there is a reference to 25 more outlets, 25 or more
17 outlets. I don't think that's in the water company
18 definition.

19 COMMISSIONER GAW: Now, in 393 the
20 Legislature enacted some particular provisions for
21 nonprofit sewer companies and nonprofit water companies?

22 MR. COMLEY: Yes.

23 COMMISSIONER GAW: Do you know when that
24 was adopted? Was it about '97?

25 MR. COMLEY: Yes. And I think on the

1 history of that, Commissioner Gaw, I think that maybe one
2 was passed in '97 and one may not have been passed until
3 '98. There could have been some difference. I don't
4 think they were joined in the same House or Senate Bill.

5 COMMISSIONER GAW: Is this the one where
6 there's a dual section on one of them, in other words, a
7 section was passed in two different bills that doesn't
8 read exactly the same?

9 MR. COMLEY: You may be correct. I'm
10 sorry. I'm vague on that.

11 COMMISSIONER GAW: Well, I'm not sure that
12 I am. I don't know that it matters in this case. In
13 regard to this issue, there's -- the Legislature in
14 this -- in this later enactment of non-for-profit sewer
15 and non-for-profit or nonprofit water companies
16 specifically set forth criteria to qualify for those
17 categories, didn't they?

18 MR. COMLEY: Yes. The statute is fairly
19 explicit on that.

20 COMMISSIONER GAW: Now, the current owners,
21 the current owner of this water and sewer system is not
22 qualified under these newer provisions. Would you agree
23 with that or disagree with that?

24 MR. COMLEY: The association that we're
25 talking about was not organized under those sections.

1 COMMISSIONER GAW: Yes. The proposed
2 transferee is organized under those sections?

3 MR. COMLEY: Yes.

4 COMMISSIONER GAW: Now, those provisions,
5 if I recall correctly, generally on the newer provisions
6 generally provide that -- a mechanism so that those
7 receiving service are members --

8 MR. COMLEY: Exactly.

9 COMMISSIONER GAW: -- of the association?

10 MR. COMLEY: Exactly.

11 COMMISSIONER GAW: And that they elect a
12 board of directors?

13 MR. COMLEY: Yes.

14 COMMISSIONER GAW: Okay. And so the old
15 concept under these sections that we have with the rural
16 electric coops and perhaps with the munis on electric,
17 that the members control those who set the rates would
18 hold true with those sections, would they not?

19 MR. COMLEY: I think that's the beauty of
20 that system, yes. There would be local management, local
21 voices, I'll say voice to that. They can post their
22 grievance or post their favor about how the rates are
23 proposed. Yes, it's very much like a rural electric
24 cooperative.

25 COMMISSIONER GAW: Okay. Help me to

1 understand why the Legislature would have thought it
2 necessary to pass these provisions in section -- in
3 Chapter 393 on water and sewer nonprofit companies if it
4 were already possible to have a much looser way of
5 handling systems without having those requirements that
6 members have the right to elect their board of directors
7 and those that were setting rates.

8 MR. COMLEY: I think it was because of a
9 man named Vernon Stump and Gary Duffy. Both of them had
10 difficulty --

11 COMMISSIONER GAW: I should have known.

12 MR. COMLEY: Yes. These bills came about,
13 I think, as a direct consequence of the Commission's
14 decisions in the Rocky Ridge Ranch case. That is my
15 memory, and you'll have to check with Mr. Duffy about
16 this, but some of these things were the brain child of
17 Mr. Duffy.

18 There had been a number of occasions when
19 there were doubts about associations created under the
20 non-for-profit act were working for gain, and the
21 decisions made by the Commission were indicating that it
22 was almost impossible to come up with a workable system
23 that was manageable by developers and customers of the
24 systems alike.

25 So I think that was what happened. At the

1 time that this organization was started, it was doubtful
2 whether those sections were really available.

3 COMMISSIONER GAW: Okay. So in other
4 words, if you were forming one of these today in order to
5 have a nonprofit water or sewer company, would you advise
6 a client to use these sections in 393 as opposed to
7 venturing out in this other unknown territory?

8 MR. COMLEY: Unless there was some
9 compelling reason to do the other, and I don't know if
10 there would be -- it could be some issue pertaining to
11 property ownership not related to the company -- I would
12 suggest that they use the new versions of Chapter 393 to
13 create the not-for-profit company.

14 COMMISSIONER GAW: And under those sections
15 in 393 on water and sewer nonprofit companies clearly is
16 set forth as an area where the Commission does not
17 exercise jurisdiction?

18 MR. COMLEY: That's one of the provisions,
19 yes.

20 COMMISSIONER GAW: Thank you very much.

21 JUDGE STEARLEY: Commissioner Murray?

22 COMMISSIONER MURRAY: Thank you.

23 Mr. Comley, this threshold issue of jurisdiction, in your
24 opinion, is it purely a legal issue or are there factual
25 disputes that are relevant to the jurisdictional issue

1 that we still have to determine?

2 MR. COMLEY: There are some preliminary
3 facts that the Commission would have to review,
4 Commissioner Murray, and I -- the facts would be some that
5 I mentioned to Commissioner Gaw and Commissioner Clayton.
6 I think the Commission should examine the lack of profit,
7 the intention of the association, how it's been offering
8 service, the relationship it has with its members and the
9 nonmembers that are taking service. I will concede that.
10 I think that's something that the Commission will have to
11 consider.

12 But once those facts are considered, I do
13 consider it a legal question after that.

14 COMMISSIONER MURRAY: So in your opinion,
15 are we proceeding in the manner in which we will first be
16 addressing the jurisdictional issue and no issues beyond
17 what we need to look at to determine, first determine that
18 threshold issue?

19 MR. COMLEY: No. My understanding was that
20 the cases were consolidated for hearing or joined for
21 hearing so that there wouldn't be a duplication of effort
22 in the case one decision was made and you had to have
23 another hearing on the other. So I looked at the decision
24 of the Commission as one that would be of convenience to
25 you and to the parties. That doesn't mean that you have

1 to reach that next point, but you're getting a fairly wide
2 picture of the facts.

3 COMMISSIONER MURRAY: Broader than we need
4 to determine the jurisdictional issue?

5 MR. COMLEY: I would submit that.

6 COMMISSIONER MURRAY: All right. Thank
7 you.

8 JUDGE STEARLEY: Thank you, Mr. Comley.
9 Opening statements from Staff.

10 MR. THOMPSON: Thank you, your Honor. May
11 it please the Commission?

12 Staff's position in this case is that Staff
13 is in favor of the transfer of the assets to Big Island
14 Water Company and Big Island Sewer Company. Staff's
15 position, however, is that the developer, Folsom Ridge,
16 and the Association do require a certificate of
17 convenience and necessity for what they are presently
18 doing, which is providing water and sewer services, and we
19 believe, therefore, that you should find that the
20 Commission does have jurisdiction and then, as I said,
21 approve the transfer as being in the public interest.

22 Staff has not sought penalties against the
23 developer and the Association for operating as unlicensed
24 water and sewer utilities, and Staff will not seek
25 penalties unless the Commission in its Report and Order

1 directs it to do so. The reason is because we believe the
2 best approach is to fix the problem, which after all is
3 what the companies are here to do, to get an authorization
4 to transfer the assets into the hands of entities that are
5 authorized under the law to do this business. And so we
6 see the seeking of penalties as being essentially
7 unnecessary since the companies are seeking to rectify the
8 problem that they created in the past by engaging in this
9 unlicensed or unauthorized activity.

10 We would suggest that you consider the
11 various matters too lengthy to go through here pointed out
12 on pages 4 through 6 of the testimony of Martin Hummel,
13 which is attached as a schedule to the testimony of Staff
14 witness Jim Merciel. Mr. Hummel there recites a number of
15 things that he thinks the Commission could consider in
16 imposing conditions on the transfer.

17 Staff's position is simply that this is an
18 opportunity through conditions to make sure that the
19 systems are safe, that adequate and safe service is being
20 provided, that the interests of people who have paid money
21 for the right to tap on in the future are protected. And
22 with those things in line, we think the public interest
23 supports approval of the transfer. Thank you very much.

24 JUDGE STEARLEY: Any questions for
25 Mr. Thompson? Commissioner Murray?

1 COMMISSIONER MURRAY: Mr. Thompson, I have
2 read the conditions that you referenced in Mr. Hummel's
3 testimony, but not recently enough to recall them
4 thoroughly. My question to you is, if we do determine
5 that we have jurisdiction and we determine that we are
6 approving the transfer, do we have the jurisdiction to
7 impose these conditions or are they conditions that would
8 go beyond the time frame in which we would have
9 jurisdiction?

10 MR. THOMPSON: Your jurisdiction will end
11 when you approve the transfer and the transactions
12 necessary to accomplish it are completed. Then as pointed
13 out by Mr. Comley as a matter of statute, the two 393
14 organizations are not subject to regulation by this
15 Commission.

16 However, the Commissions does have
17 jurisdiction to impose conditions on the transfer, and
18 therefore the Commission could structure its Order, if it
19 chooses to impose conditions, that it will not give final
20 approval until it is satisfied that the conditions have
21 been met.

22 COMMISSIONER MURRAY: And that basically is
23 my question. I've not studied these conditions thoroughly
24 enough to know. Are they conditions that would apply
25 immediately, that could be accomplished within a short

1 period of time so that the transfer being contingent upon
2 them would not be delayed?

3 MR. THOMPSON: Unfortunately, I don't have
4 an answer to that. Many of them I think are simply best
5 practices sorts of things that you would expect a well-run
6 water and sewer utility to have on hand, such as plans,
7 definitions, that kind of thing.

8 As far as any work that would need to be
9 done, such as installing meters, I don't know how quickly
10 that could be done. Certainly Mr. Comley and his
11 witnesses could speak to that, and I'm sure they're
12 prepared to do so.

13 COMMISSIONER MURRAY: All right. Thank
14 you.

15 MR. THOMPSON: Thank you, Commissioner.

16 JUDGE STEARLEY: Commissioner Gaw?

17 COMMISSIONER GAW: Mr. Thompson, just
18 pretty quickly here. Mr. Comley ran through a couple of
19 things that he believes Staff's position was in regard to
20 the issue of jurisdiction and why the Commission should
21 have jurisdiction over the current owners. Would you
22 generally agree with him or do you want to state yourself
23 what it is that you believe makes this subject to our
24 jurisdiction?

25 MR. THOMPSON: Certainly, Commissioner.

1 Mr. Comley referred to the Rocky Ridge Ranch decision. As
2 you know, there is no stare decisis in administrative
3 proceedings, so the Commission is not bound by anything
4 the previous Commission has done.

5 Nonetheless, many attorneys and businesses
6 look to the Commission's decisions for guidance in how to
7 manage their affairs on an ongoing basis. so I think
8 there is certainly some interest on the part of the
9 Commission to be consistent with its previous decisions,
10 unless it thinks they were wrong in some respect. So
11 having said that --

12 COMMISSIONER GAW: Let's not go down that
13 road, but you just keep going.

14 MR. THOMPSON: Well, the Commission's
15 jurisdiction is a matter of statute. Therefore, the
16 Commission has jurisdiction over any entity that falls
17 within the statutory definition of a water corporation or
18 a sewer corporation. So that's the threshold question
19 here. Are these entities a water corporation as defined
20 in Chapter 386 in that they own, control, operate or
21 manage a water system or water plant or water property and
22 distribute, sell or supply that water for gain?

23 With respect to the sewer definition, are
24 either of these entities a sewer corporation within the
25 intendments of Chapter 386 in that they own, control,

1 operate or manage sewer plant with 25 or more outlets, and
2 they collect, carry, treat or dispose of sewage for gain?
3 Those are the statutory definitions. Those are the
4 elements. The Rocky Ridge Ranch decision is merely
5 guidance, and it can't alter the statute.

6 I would direct your attention to a decision
7 of the Southern District Court of Appeals, Osage Water
8 Company vs. Miller County Public Water Supply District
9 No. -- I don't recall the number. But in that case the
10 Court of Appeals held that gain simply means compensation,
11 simply means money. Did you collect money from your
12 customers? It doesn't matter who gets the money. It
13 doesn't matter if you're losing money. After all, we
14 constantly have small water and sewer companies come
15 before us that are losing money.

16 That doesn't mean they're not subject to
17 regulation. It doesn't matter that they're
18 not-for-profit. It doesn't matter if they're a for-profit
19 corporation. It simply means do they collect money from
20 the customer in exchange for the service. And I think the
21 evidence will show they do.

22 The evidence -- now, with respect to Rocky
23 Ridge, Rocky Ridge was an effort to understand and apply
24 an early Supreme Court decision, the Danzinger case. The
25 Danzinger case is in some ways I think misleading.

1 Certain it's still good law. Never been overturned. But
2 you have to remember it came from around 1920, 1925, a
3 very early case.

4 In the Danzinger case, there was a brewery
5 in Weston, Missouri that had a generator, and the
6 generator in the brewery produced more power than the
7 brewing process required, so the brewmaster, the owner of
8 the brewery, as a friendly gesture told his friends, you
9 know, if you bring a wire down to the brewery, I'll hook
10 it up and supply you with power. Now, I have to charge
11 you a little something because it costs money to make, but
12 we'll turn you on. And he supplied power, I think, to
13 perhaps a third of the city of Weston.

14 And the case came up because he got mad at
15 the newspaper editor over a story and he turned him off,
16 and the newspaper editor brought a complaint saying, you
17 can't. You're a public utility. You have to serve
18 everybody who asks.

19 And the Supreme Court analyzed it based on
20 the common law of carriage. Was the brewery a common
21 carrier in that he was holding out to carry for anyone, or
22 was he a private carrier in that his services were only
23 available to a few? And in that instance, they decided
24 that brewer was a private carrier.

25 Well, those are all concepts that we just

1 don't use anymore in analyzing who's a public utility and
2 who's not. So I would suggest that we not get confused by
3 Danzinger, that we not pay too much attention to Rocky
4 Ridge, yet instead we look at the statute and decide
5 whether the activities of the applicants fall within the
6 statutory definition. Staff believes the evidence will
7 show that they do, and therefore you should find that you
8 have jurisdiction.

9 We also believe that it's absolutely in the
10 public interest and not detrimental to that interest that
11 the transfer be approved, that these assets be placed in
12 the hands of entities authorized by law to carry on these
13 activities. Any further questions?

14 COMMISSIONER GAW: No. That's -- that
15 covers it pretty much. Thank you.

16 MR. THOMPSON: Thank you,

17 COMMISSIONER GAW: One quick question. Did
18 the Southern District take any notice of the Danzinger
19 case in its opinion?

20 MR. THOMPSON: As best I can recall right
21 now, they did not discuss Danzinger.

22 COMMISSIONER GAW: Okay. Thank you.

23 JUDGE STEARLEY: Commissioner Clayton?

24 COMMISSIONER CLAYTON: I almost said Judge
25 Thompson.

1 MR. THOMPSON: I still answer to that.

2 COMMISSIONER CLAYTON: Yeah, I bet you do.
3 I wanted to ask, okay, Staff believes that the company
4 meets the definition of water and sewer company under
5 Chapter 386, and did Staff do a review of when it believed
6 it began meeting the level of the definition? Did they
7 meet the definition from the beginning when they started
8 offering water and sewer service to those customers or the
9 members or whatever you want to call them?

10 MR. THOMPSON: I believe that they did.

11 JUDGE STEARLEY: Okay. What year would
12 that have been?

13 MR. THOMPSON: Around 2000.

14 COMMISSIONER CLAYTON: Around 2000. Okay.
15 So Staff has chosen not to file any type of complaint
16 action against the company, even though it felt it should
17 have had a certificate and acted as one of these companies
18 for five or six years, and you stated that Staff doesn't
19 believe that warrants any type of penalty or punishment if
20 it meets this category of definition?

21 MR. THOMPSON: Staff's position is that the
22 public interest wants the problem to be fixed, the problem
23 being that an unauthorized entity is engaged in this
24 activity. From the beginning, they've made every effort
25 to comply with DNR. They haven't always been successful,

1 as you'll hear, but this hasn't been the kind of operation
2 that has placed the public health in danger.

3 For that reason, and because they're now,
4 admittedly belatedly, attempting to fix it by getting the
5 system into the right kind of operational hands, we have
6 not sought penalties in this case. But as I said, if the
7 Commission finds that there may have been violations and
8 directs us in its Report and Order, we'll certainly file a
9 complaint.

10 COMMISSIONER CLAYTON: Well, with your
11 knowledge, you're aware of problems that we have had with
12 small water companies, the challenges that they face with
13 the amount of investments that's necessary to maintain
14 these systems. I guess my last question is to you, what
15 message do we send by saying that we believe this
16 company's been unlawfully operating in this state for six
17 years, but we think as long as we -- they're legal from
18 tomorrow going forward, everything is okay, what message
19 are we sending out to those entities that are perhaps
20 violating the law or contemplating how they're going to
21 set up their system in violation of the law?

22 MR. THOMPSON: Well, I see it as being kind
23 of like a tax amnesty. Come to us and get legal and
24 that's okay, but if you persist in your unlawful activity,
25 then we're going to come down on you hard.

1 COMMISSIONER CLAYTON: Well, is it a fair
2 representation that they never would have come to us if
3 there hadn't been complaints filed by individual
4 customers? I mean, do they really come to us in the first
5 instance?

6 MR. THOMPSON: Frankly, I don't know
7 offhand what the history of relationship between the Staff
8 and this company, these companies has been. I don't know
9 when the water and sewer staff became aware of them.

10 The problem is, as you know, there's
11 development activity going on, real estate development
12 activity going on throughout the state all the time, and
13 there's absolutely nothing preventing a developer from
14 setting up a water company, setting up a sewer company,
15 and there are hundreds of them out there. And they only
16 come to our attention on really kind of a haphazard basis.

17 And yes, it's my view that whenever we
18 become aware of an operation that needs to be certificated
19 and is not, that we seek a penalty, we file a complaint.
20 In fact, I've sent my attorneys out on a regular basis to
21 seek TROs ordering them to stop until they get
22 certificates. So that's been the policy of this office
23 since I became the General Counsel.

24 In this particular case, discussions were
25 already ongoing about how to fix it. You heard the

1 mention of --

2 COMMISSIONER CLAYTON: Prior to the
3 complaint? Prior to the complaints being filed which
4 instigated the actions?

5 MR. THOMPSON: I think their complaints
6 probably came first, and then the company responded by
7 filing the action to seek the certificate, to create a new
8 entity. Now they've gone down a different path. Because
9 there were already complaints in place, Staff did not join
10 in those complaints.

11 COMMISSIONER CLAYTON: Well, if we adopt
12 what you've suggested where we find jurisdiction, the
13 company was acting as a public utility, meets the
14 definition, the Commission has jurisdiction, but we
15 authorize the transfer, wouldn't you agree with me that
16 that just sends the message that there's really no penalty
17 for coming in and getting the certificate in the first
18 place, that as long as once you get caught and you seek a
19 certificate, that everything will be okay?

20 MR. THOMPSON: Well, that's a policy
21 question for the Commission.

22 COMMISSIONER CLAYTON: I understand. I'm
23 asking the Staff's policy, its position on that policy,
24 because you-all are the front line.

25 MR. THOMPSON: Right.

1 COMMISSIONER CLAYTON: A lot of things
2 won't even come to us unless we see it from you. I just
3 want to be clear on that as we move forward.

4 MR. THOMPSON: As I said, my view has been
5 that akin to a tax amnesty. Let's get the non-filers in
6 here so we don't have to go out and find them. If we
7 impose a penalty in every case where somebody has been
8 operating without a certificate and has now come in to get
9 one, what about all those other companies out there that
10 we haven't found yet?

11 It seems to me that might encourage them to
12 delay coming in as long as possible since they're going to
13 get hit with a penalty anyway. I would rather get them in
14 and get them regulated to protect the public interest as
15 soon as possible, so that's why I've taken the position I
16 have.

17 COMMISSIONER CLAYTON: Thank you.

18 COMMISSIONER MURRAY: Judge, I have --

19 JUDGE STEARLEY: Commissioner Murray.

20 COMMISSIONER MURRAY: Thank you.

21 Mr. Thompson, would you agree that the interpretation of
22 the statute in terms of the facts of this situation and
23 whether or not this is a company that has to be -- that is
24 required to have a certificate to do what it has been
25 doing is somewhat subject to question, that it is not

1 abundantly clear even to the Commission let alone to a
2 layperson that a certificate is required in this
3 situation?

4 MR. THOMPSON: Well, that's kind of a mens
5 rea question, right, what was in their mind as they
6 operated, what did they know or what should they have
7 known. And what I would say is the best guidance that has
8 existed has been the Commission's Rocky Ridge Ranch
9 decision. And based on that decision, it would have been
10 absolutely clear to them that they required a certificate.

11 COMMISSIONER MURRAY: So in your
12 estimation, there is no question that a certificate is
13 required?

14 MR. THOMPSON: That's true. There is no
15 question in my mind.

16 COMMISSIONER MURRAY: Okay. Thank you.

17 MR. THOMPSON: Thank you, Commissioner.

18 JUDGE STEARLEY: Commissioner Appling?

19 COMMISSIONER APPLING: No questions, Judge.

20 COMMISSIONER GAW: I want to go back,
21 Judge, just a few minutes.

22 JUDGE STEARLEY: That's all right. I have
23 a few questions myself for Mr. Thompson.

24 COMMISSIONER GAW: If you want to go ahead.

25 JUDGE STEARLEY: By all means, you go

1 first.

2 COMMISSIONER GAW: Back on the jurisdiction
3 issue, I'm trying to track. I should have followed up a
4 little better on this. When the Staff says that this
5 association, this company rather should be subject to
6 jurisdiction, what is it that Staff's position is in
7 regard to what makes them, what particular facts make them
8 subject to our jurisdiction?

9 MR. THOMPSON: Well, those facts --

10 COMMISSIONER GAW: That's what Mr. Comley I
11 think was refer to, but I want you to tell me what Staff's
12 position is on that.

13 MR. THOMPSON: Certainly. It is Staff's
14 position that the evidence shows that both of these
15 entities own, control, operate or manage water system,
16 plant or property, and sell that water for compensation.

17 COMMISSIONER GAW: Okay. So that's --
18 that's the basic --

19 MR. THOMPSON: Absolutely.

20 COMMISSIONER GAW: -- the basic requirement
21 under the Southern District case in your opinion, and
22 that's really what you're referring to, I assume --

23 MR. THOMPSON: Yes, Commissioner.

24 COMMISSIONER GAW: -- as the legal basis is
25 that interpretation on the Southern District case?

1 MR. THOMPSON: That's correct. I think
2 it's within the ambit of Danzinger. There is another
3 early case having to do with the provision of electricity
4 in Kansas City where -- and I can't recall if that was a
5 Supreme Court case or an appellate level case, but the
6 basic holding was, you know, if you generate electricity
7 for your own purpose, your own use, then you're not
8 subject to regulation.

9 COMMISSIONER GAW: Yes. Now, there's --
10 the reason I'm a little bit troubled with this comparison
11 to electric corporations, because the language in 386.020
12 on electrical corporations differs fairly significantly it
13 seems to me from the language on water and sewer
14 companies, and in particular the question of whether or
15 not it's being used for its own use or tenants and not for
16 sale to others.

17 That language exists, if I'm reading this
18 correctly, in subsection 15 for electrical corporations.
19 Also, it is -- there's that language for public use in
20 section 18, subsection 18 of gas corporations. But I
21 don't see that language, unless I'm just skipping over it
22 here, under subsection 48 or subsection 58 on sewer and
23 water.

24 MR. THOMPSON: That's correct, which may
25 very well mean that Danzinger and that Kansas City case

1 don't even apply.

2 COMMISSIONER GAW: Well, that's the reason
3 I'm asking is whether or not that interpretation of that
4 particular subsection may be somewhat of a red herring. I
5 don't know. I'm just asking if you've thought about it or
6 not.

7 MR. THOMPSON: I based my analysis on the
8 Southern District Osage Water Company case, which is the
9 most recent, and which is after all water.

10 COMMISSIONER GAW: Okay. All right. I
11 will stop for the time being. Thank you.

12 MR. THOMPSON: Thank you.

13 JUDGE STEARLEY: I had two questions for
14 you, Mr. Thompson.

15 MR. THOMPSON: Yes, Judge.

16 JUDGE STEARLEY: Jumping ahead to the
17 transfer, if the Commission were to decide it had
18 jurisdiction and that it needed to approve transfer, do
19 you believe the Commission can impose conditions that
20 exceed what is required of Chapter 393 for these entities
21 to establish themselves? Because once they're established
22 as 393 companies, the Commission has no jurisdiction.

23 MR. THOMPSON: You have no ability to
24 impose conditions on the 393 corporations. I guess I
25 haven't been clear. If you find you have jurisdiction and

1 that the Applicants are subject to regulation, then you
2 have the authority to impose conditions on what they do,
3 and what they would be doing is transferring their systems
4 to these unregulated entities, and you can impose
5 conditions on the transfer. So the conditions would be
6 imposed on entities subject to your regulation, and that
7 would be the necessary first finding.

8 JUDGE STEARLEY: My question is, if those
9 conditions when we approve the transfer actually exceed
10 any requirements of those entities under Chapter 393,
11 could they then just once the transfer has occurred revert
12 back solely to the requirements of 393?

13 MR. THOMPSON: I don't think any of the
14 conditions could be ongoing conditions that the 393s would
15 have to meet. I think we're talking about things like
16 making sure that the system, the physical plant is in the
17 necessary condition. Maybe -- I suppose you could ask the
18 393s as a condition of granting approval to promise to
19 respect rights of people who have bought the right to tap
20 on, that sort of thing, but if they don't, I don't -- the
21 transfer, once approved and once it's happened, I don't
22 know whether there would be any enforcement mechanism.

23 JUDGE STEARLEY: All right. Thank you. I
24 have one -- do you want to ask yours first?

25 COMMISSIONER MURRAY: No. Go ahead.

1 JUDGE STEARLEY: I have one other question.

2 MR. THOMPSON: You know, the bar exam is
3 going on just even as we speak. I feel like maybe it
4 should be happening right here.

5 JUDGE STEARLEY: With regard to the Osage
6 Water case, and if I have the correct case, the same case,
7 1997 by the Southern District.

8 MR. THOMPSON: That's it.

9 JUDGE STEARLEY: In their interpretation of
10 our statutes in terms of the elements of what constitutes
11 water and sewer company, do you believe their
12 interpretation also includes an element not just that
13 they're providing service for gain, but that it is
14 provided to the general public?

15 MR. THOMPSON: That's where they're
16 incorporating the Danzinger line of cases. So I guess
17 there is some consideration of that in there. Certainly
18 as you point out that's not in the language of the
19 definition here. All I can say, Judge, is that I think
20 the decision by the Southern District, the analysis by the
21 Southern District is correct, and under that decision I
22 believe the evidence will show that these entities are
23 within the jurisdiction of the Commission.

24 JUDGE STEARLEY: All right. Thank you.
25 Commissioner Murray?

1 COMMISSIONER MURRAY: Thank you. And I'm
2 just following up on this jurisdictional question some
3 more. A homeowners association providing water and sewer
4 service does not come under our jurisdiction; is that
5 correct?

6 MR. THOMPSON: No, that's not correct.
7 There is no exception for a homeowners association that's
8 specifically written into the law. Instead, there's an
9 exception that has kind of been created by these few and
10 occasional court decisions telling us what it means to be
11 a public utility and what is and what isn't.

12 And so the Commission Staff has taken the
13 view that you are not providing services to the public if
14 every customer has an equal vote by being -- by virtue of
15 being a customer in the management of the association.

16 Contrary, where the votes are based on lot
17 ownership, so that you don't even have to be a customer to
18 have a vote, and where usually the developer controls the
19 association by virtue of owning the largest number of
20 lots, we've always taken the position that that is not
21 providing services to yourself.

22 The developer as a lot owner isn't a
23 customer. Only to the extent the developer is actually
24 taking water or sewer service. You see? So if you can
25 provides utility type services to yourself for your own

1 purposes and not fall within the regulation of the
2 Commission, then the best model of that for an association
3 is one where the only people getting service are members,
4 and only members get to vote, and every customer is a
5 member.

6 COMMISSIONER MURRAY: So that any developer
7 who establishes a homeowners association but maintains
8 more than one vote for itself would fall under our
9 jurisdiction, is that what you're saying?

10 MR. THOMPSON: Yes, ma'am.

11 COMMISSIONER MURRAY: And that any
12 developer who sets up a homeowners association even if the
13 votes are equal, one vote per customer, but that system
14 allows someone to connect who voluntarily chooses not to
15 be a member, that also brings that system under our
16 jurisdiction, is that your position?

17 MR. THOMPSON: I think it does. I'd agree
18 it's arguable, but I think it does.

19 COMMISSIONER MURRAY: Earlier, though, you
20 said you had no question but that this -- these systems
21 had to be certificated, and you based that on the Rocky
22 Ridge Ranch case, but then later you said that might not
23 even apply. So --

24 MR. THOMPSON: I don't mean to be
25 confusing. I base it on the language of the statute.

1 COMMISSIONER MURRAY: Yes. And that's
2 where I'm going with this, because it still does -- the
3 statute still requires some interpretation, does it not?
4 I mean, it is --

5 MR. THOMPSON: Yes, it does.

6 COMMISSIONER MURRAY: -- not clear on its
7 face to read that statute that this water and sewer system
8 would have been required to have a certificate?

9 MR. THOMPSON: Well, I think the evidence
10 will show that either the association or the developer
11 owns the assets. The association has the contract with
12 the operator, so the association operates the assets. The
13 developer under the bylaws of the association controls the
14 association. So I think the evidence will show that both
15 of them fall within the definition.

16 No one disputes that there's water system
17 plant and sewer system plant, and if we understand gain to
18 simply mean compensation, the evidence is ample that there
19 has been a sale of the services for compensation.

20 COMMISSIONER MURRAY: But, Mr. Thompson,
21 there is nothing in the statute that says that in order to
22 be providing service to -- without gain, that an
23 association, homeowners association would have to have one
24 vote per customer. That is an interpretation, is it not?

25 MR. THOMPSON: That is, absolutely.

1 COMMISSIONER MURRAY: So you can't look at
2 that statute and as a developer or as a homeowners
3 association in which the votes are not split that way,
4 automatically know that you are required to have a
5 certificate, you can?

6 MR. THOMPSON: Well, the Rocky Ridge case,
7 that really creates an exception to the statute. I mean,
8 under the statute, if all they're going to look at is the
9 statute, then it seems to me they know they have to have a
10 certificate no matter how they're organized.

11 COMMISSIONER MURRAY: Well, now, wait a
12 minute. No matter how they're organized? If they're
13 organized where the homeowners are providing service to
14 themselves through an association?

15 MR. THOMPSON: Well, the language of the
16 statute specifically mentions an association. I didn't
17 reproduce that here in the issues list, but if you look at
18 the definition, it states association is one of the
19 entities specifically enumerated.

20 COMMISSIONER MURRAY: But there are other
21 associations besides homeowners associations. A
22 homeowners association providing service to its members,
23 even if it's charging its members, that's providing
24 service -- wouldn't you agree that that is not service for
25 gain?

1 MR. THOMPSON: Well, if gain just means
2 compensation, then I don't think I can agree with you.

3 COMMISSIONER MURRAY: So you're taking a
4 position that even a homeowners association in which every
5 member has one vote, as long as there is --

6 MR. THOMPSON: I think a normal standard
7 homeowners association where every member has a vote and
8 only members are customers, yes, I think that falls within
9 the language of the statute. That's absolutely right. I
10 do think there is a court-made exception to the statute,
11 but that's certainly not stated there.

12 COMMISSIONER MURRAY: Okay. Thank you.

13 JUDGE STEARLEY: Any other questions for
14 Mr. Thompson?

15 COMMISSIONER CLAYTON: Last law school
16 question. Make the -- make the assumption, let's say --
17 let's say we do what you say, we determine that we have
18 jurisdiction, that it is a public utility. However, we
19 decide that the transfer is also in the public interest
20 and we approve the transfer.

21 Does the Commission have authority to
22 address statutory or rule violations that perhaps the
23 utility committed prior to the transfer? Are we able to
24 dress those violations through a complaint or not?

25 MR. THOMPSON: Yes.

1 COMMISSIONER CLAYTON: We do?

2 MR. THOMPSON: Yes.

3 COMMISSIONER CLAYTON: And is the public
4 utility the developer and the association or just one or
5 the other?

6 MR. THOMPSON: I believe they're both
7 within the ambit of the statute.

8 COMMISSIONER CLAYTON: Okay. Thank you.

9 JUDGE STEARLEY: Any additional questions
10 for Mr. Thompson? Okay. Thank you, Mr. Thompson.

11 MR. THOMPSON: Thank you, Judge.

12 JUDGE STEARLEY: At this point we've been
13 going for about two hours, and I'd like, if nothing else,
14 to give my court reporter a break, to rest her fingers, so
15 we will take a break intermission, approximately ten
16 minutes, and then come back on the record.

17 (A BREAK WAS TAKEN.)

18 JUDGE STEARLEY: All right. We are back on
19 the record, continuing with opening statements, and it is
20 time for the Office of Public Counsel, Mr. Mills.

21 MR. MILLS: Thank you, your Honor. I think
22 I can be fairly brief. Let me sort of go backwards and
23 address some of the questions the Commission was
24 addressing at the end of Mr. Thompson's opening statements
25 first while they're fresh on my mind.

1 In terms of one of the questions that
2 Commissioner Clayton asked was whether or not Staff should
3 really be pursuing penalties, and I have a slightly
4 different view on that than Mr. Thompson. I agree that I
5 don't think that penalties are really critical in this
6 case, but it's not really so much along the lines of the
7 tax amnesty approach that Mr. Thompson suggested.

8 From my point of view, the violations were
9 not so egregious as to require penalties. The Commission
10 finds practically on a daily basis that there are
11 utilities out there that don't comply with all rules.
12 Penalties are a relatively rare remedy that the Commission
13 seeks.

14 In this case, I think although I don't buy
15 the argument, I think that Folsom Ridge and the
16 Association have an argument that they arguably are not
17 public utilities subject to the Commission's jurisdiction.
18 They have made that argument in these series of cases. As
19 I said, although I don't buy it, I think it is a colorful
20 argument, and because of that, I don't think penalties are
21 appropriate.

22 And the last series of questions that the
23 Commissioners had for Mr. Thompson basically all had to do
24 with the jurisdictional question that sort of relates to
25 that. And from my point of view, I think that the most

1 critical fact that leads me to conclude that the
2 Commission does have jurisdiction over the Association as
3 a utility is that it is serving nonmembers. There was a
4 lot of discussion about Danzinger and the Southern
5 District Osage Water case. I think that to me the -- one
6 of the clearest colorments of public utility service is
7 holding out service to the public.

8 And while the Association and Folsom Ridge
9 can argue that there's just a handful that they're
10 serving, I think the evidence will show that it's
11 something close to a dozen if you count water and sewer
12 customers together, on a total customer basis in the
13 neighborhood of 100.

14 So whether that constitutes a large number
15 or a small number, I think it constitutes a sufficient
16 number for the Commission to find that the Association is
17 providing service to the public and not simply to its
18 members. If it was one, then maybe the answer would be
19 different, but I think certainly in this case there is a
20 sufficient number of nonmember customers that the
21 Commission can and should find that the Association is
22 subject to the Commission's jurisdiction as a utility.

23 Having said that, let me go back to sort of
24 the beginning and do the main part of my opening
25 statement, which is Public Counsel's position in the case.

1 And again, I don't disagree very much with what
2 Mr. Thompson said. However, I can't quite yet make the
3 last leap that he has, which is that the proposed transfer
4 is something the Commission should approve.

5 I do think that the Commission should take
6 jurisdiction over the transfer, should find that the
7 association is a utility subject to its jurisdiction and
8 so that approval of the transfer by the Commission is
9 necessary.

10 And I have not yet had the opportunity to
11 analyze all the evidence in the case to determine whether
12 the proposed transfer is not detrimental to the public
13 interest. We have a relatively small but quite vocal
14 group of affected members of the public who feel strongly
15 that it is not in the public interest and, in fact, is
16 detrimental to the public interest, and during the course
17 of this hearing we're going to hear from them.

18 And I am going to see what the evidence
19 brings, and I believe that by the time we do closing
20 statements, I'll be in a position to say whether the
21 Public Counsel believes the transaction is detrimental or
22 not detrimental. But as of now, I think it's an open
23 question in my mind.

24 And having said that, let me sort of go
25 back to a procedural matter, and I don't really know the

1 answer to this but I'm going to raise it. I think it was
2 before we went on the record we discussed whether or not
3 briefs or closing argument would be appropriate, and I
4 think the general consensus among the parties was that
5 closing argument might be.

6 Given the Commission's focus this morning
7 on the legal questions of jurisdiction, it may be that a
8 combination of the two would be -- would serve the
9 Commission best. It may be that they would like briefs on
10 jurisdictional issues and we can do closing arguments
11 about the factual issues. I guess I'm sort of throwing
12 that out as a suggestion before we pass the point of no
13 return.

14 JUDGE STEARLEY: And we can take that up
15 again at the conclusion of the presentation of the
16 evidence.

17 MR. MILLS: Certainly if the -- if the
18 Commission is focused in, wants more analysis on the
19 jurisdictional question, I think that would be better done
20 in briefs rather than on the fly of closing arguments.
21 But certainly it's up to the Commission to decide that
22 question.

23 And having said that, that concludes my
24 opening statement, and I'd be happy to answer questions
25 from the Commissioners or the Judge.

1 JUDGE STEARLEY: Commissioner Gaw?

2 COMMISSIONER GAW: Would you mind repeating
3 that? I'm kidding.

4 MR. MILLS: Actually, I can. I can do it
5 in a nutshell because it really wasn't very long to begin
6 with.

7 COMMISSIONER GAW: What I'm really looking
8 for is just your position on the jurisdiction issue.

9 MR. MILLS: My position on the
10 jurisdictional issue, I come down on the same side of it
11 as Mr. Thompson for slightly differently emphasis,
12 basically the same reasons. Because the Association is
13 offering service to nonmembers, has been for some time,
14 from all indications would offer service to other
15 nonmembers if they asked, I believe that they are a
16 utility holding themselves out to offer service to the
17 general public in the area in which they serve, and I
18 think that makes them a public utility subject to your
19 jurisdiction.

20 COMMISSIONER GAW: Is that under the
21 analysis of the Southern District case or is it
22 independent of that?

23 MR. MILLS: Well, it's really more -- more
24 along the Danzinger analysis. The Southern District I
25 think had to do with the question of whether a not for

1 profit can be offering service for gain or whether a
2 company that's not really in the business of making a
3 profit is offering service for gain. I think it meets
4 that -- the Association meets that standard here as well.

5 COMMISSIONER GAW: It actually is unfair to
6 ask questions about that case, Lewis. I understand that.
7 But what I'm looking for is because the case does go
8 through somewhat of a Danzinger analysis, whether I'm --
9 whether I can track that logic very well or not, that may
10 be debatable, but the -- I am having a little bit of
11 difficulty with the -- with the arguments in regard to
12 whether or not a -- a homeowners association is not
13 regulated if it only offers to its members. And what I
14 think I'm hearing you say is that you consider that an
15 offering not to the public.

16 MR. MILLS: Yes.

17 COMMISSIONER GAW: That because there is a
18 specific named group, even though those members may
19 change, that that's the limitation of the service, that
20 that's part of the reason it's not a public utility in
21 that case.

22 MR. MILLS: Yes, although that's not the
23 fact situation we have here, but --

24 COMMISSIONER GAW: Yes. Exactly.

25 MR. MILLS: I think if that -- you know, if

1 that -- if we had a hypothetical situation in which there
2 was a homeowners association that was only offering
3 service to members, then I don't know that I would
4 conclude that that's a public utility.

5 COMMISSIONER GAW: I understand. My
6 struggle with that analysis is simply that I can't see
7 that language about offering to the public in the gas --
8 excuse me -- in the water and sewer sections or in the
9 general definition of public utility, which seems to just
10 say if you -- you are a gas corporation, a water
11 corporation, et cetera, et cetera, you then are a public
12 utility.

13 But I -- if I look at that Southern
14 District case, it seems to not go through that type of an
15 analysis. It seems to jump over into the Danzinger
16 analysis. It may just be dicta, but it seems to jump over
17 into that. It mentions a Colorado case and says everybody
18 sees public utilities as being in this range, you have to
19 offer to the public.

20 So I'm not real clear what -- where that
21 line is when you're going in the direction of saying what
22 actually is not a public utility at this point, but
23 it's -- it strikes me that when you get into this
24 analysis, whatever analysis you use, whether it's
25 Danzinger or the Southern District case or just looking

1 through the statutes under any of that analysis, you run
2 into -- I'm not hearing you or the Staff say that this, in
3 this case that's before us, that they would be anything
4 other than a public utility.

5 MR. MILLS: And I think that's right. I
6 think the question of whether you had a homeowners
7 association that only served its members, while an
8 interesting academic question, is not -- it's not the
9 situation we have here today.

10 COMMISSIONER GAW: It's not the case in
11 front of us.

12 MR. MILLS: And under any sort of analysis,
13 whether or not -- if you look purely at the language of
14 the definitions in the statute, you wouldn't even get to
15 that question and hear the -- simply because they have
16 plant, they're providing water and sewer service, they
17 would qualify as a water and sewer service utility.

18 So I think under any type of analysis you
19 would do in this case, you have to conclude that they are
20 a water and sewer utility that's subject to your
21 jurisdiction.

22 COMMISSIONER GAW: And would you agree that
23 this Commission is bound by the -- to the extent that it's
24 applicable, bound by that Southern District case?

25 MR. MILLS: Yes.

1 COMMISSIONER GAW: Okay. That's all I
2 have. Thank you.

3 JUDGE STEARLEY: Since Commissioner Murray
4 has joined us, I'll backtrack to her.

5 COMMISSIONER MURRAY: I will -- I will not
6 ask you questions. Thank you.

7 JUDGE STEARLEY: Commissioner Clayton?
8 Commissioner Appling?

9 COMMISSIONER APPLING: No questions.

10 JUDGE STEARLEY: Thank you, Mr. Mills.
11 Take opening statements from Big Island Water and Big
12 Island Sewer Company, Ms. Holstead.

13 MS. HOLSTEAD: Good morning. My name is
14 Pam Holstead, and I am the attorney representing Big
15 Island Water Company and Big Island Sewer Company. In
16 fact, these are my only clients. I was retired until this
17 case came up.

18 The companies are referred to usually as
19 the 393 companies, and that's how I will refer to them.
20 They are intervenors in the request for transfer case
21 only. They have no position in the complaint cases.

22 I might also tell you that I am a resident
23 of Big Island. I do utilize the community water system.
24 I do utilize the community sewer system. I'm a customer
25 of both.

1 Well over a year ago PSC Staff put out a
2 suggestion that the organization of 393 companies to take
3 over and manage the water and sewer utilities on Big
4 Island might just be the best solution to the issues that
5 existed there at that time. Based on that, other
6 residents, both customers and non-customers, came together
7 to try to push through the idea of 393 ownership.

8 At first the developer was not open to 393
9 ownership due to concerns about how turning over control
10 of the utilities might have an adverse impact on his
11 ability to develop the land that he has quite an
12 investment in out there. But after a period of time and
13 back in September of 2006, the developer had a change of
14 heart and decided he was open to transferring the assets
15 to the 393 companies.

16 I set up the corporations, became very
17 familiar with 393 law, and felt like this would be the
18 best thing because the pre-existing homeowners out there
19 when the utilities were first established, they had the
20 idea that eventually those utilities would be turned over
21 to them, they would be customer owned.

22 As new people, including myself, bought
23 land and built homes out there, we also bought and built
24 with the understanding that the community water and sewer
25 utilities would eventually be customer owned and operated.

1 The majority of the people on Big Island
2 are in favor of this transfer. There are approximately 60
3 or 61, depending on which testimony you're looking at,
4 sewer customers on Big Island. Of those 60 or 61 sewer
5 customers, 49 also are water customers. In the recent
6 voting that took place at the end of January, 80 percent
7 of the actual customers, and here we're talking about 60
8 homes, were in favor of this transfer. 70 percent of the
9 105 property owners were in favor of this transfer. This
10 is what the customers want. This is what the people want.
11 This is what we were promised in the very beginning.

12 We've set up a board of directors and
13 through our bylaws have addressed some of the issues on
14 Big Island. The board of directors cust-- in order to
15 serve on the board, you must be a customer of both the
16 water company and the sewer company. A complaint that has
17 existed that you may not hear about is that the customers
18 do not like the fact that people who do not utilize the
19 service are making decisions that impact those of us who
20 do. And so we heard that concern. We addressed it in our
21 bylaws.

22 There were also some other concerns that we
23 heard, and you'll probably hear these from the
24 Complainants, and one was that people who weren't actually
25 connected to the water system and the sewer system were

1 being billed. It was a nominal fee. At the current time
2 I think it's \$5 a month. But they were saying this wasn't
3 in the cards when we were first promised water and sewer
4 service. We don't like this. So our bylaws addressed
5 that issue. You only pay if you are actually receiving
6 water or sewer service.

7 Another promise that was made early on that
8 is a subject of the complaint is that people who purchased
9 taps with the intention of connecting in the future or
10 with the intention of simply increasing their property
11 value wanted to be sure that a place was reserved for them
12 within the system so that at whatever point in time they
13 decide to hook on, there's space for them. And in our
14 bylaws we also address that issue.

15 Our bylaws take into account the 393
16 statutes. They take into account bylaws written by other
17 393 companies, and they also address the issues that exist
18 on Big Island as we understood them to be as property
19 owners and customers of the system.

20 It is our intent and we have -- and again
21 I'm talking about the 393 groups -- have negotiated a
22 contract with Lake Ozark Water and Sewer Company.
23 That's the company that currently manages the water and
24 sewer system. They are out on Big Island every Monday,
25 Wednesday and Friday taking readings, checking equipment.

1 They come out more frequently if they're called, but those
2 are the three days they are always there.

3 We want to have them remain in place so
4 that there is no change in how the system is operating and
5 people see no disruption in their service. The only
6 change would be that Lake Ozark Water and Sewer will now
7 also be taking over the actual billing, which has been
8 handled by the developer's office.

9 Once the change, the assets are transferred
10 and the 393 companies take over, the only real change
11 people are going to see is going to be in their fees.
12 Those people who are not connected to the system, simply
13 have a tap and are currently being billed because they
14 have a tap will no longer be billed.

15 And, therefore, we have to make up for that
16 loss of revenue in another area, and that area will be
17 through an increase in fees to those people who actually
18 are connected to the system. We have projected a 40
19 percent increase in the fees, which would put water bills
20 at \$14 a month and sewer bills at \$21 a month.

21 There's been some discussion brought up by
22 the minority who are opposed to this that if we do this,
23 they're going to take on some liability. The liability
24 for the system will be passed on to us, and I would like
25 to direct your attention to in the 393 statutes, it's

1 like for the Commission to know that we are representing
2 ourselves pro se, as you've probably determined from the
3 numerous pleadings that we've filed and our lack of legal
4 expertise. We will do to the very best of our
5 capabilities to represent our formal complaints and issues
6 very respectfully to the Commission. I don't know that
7 we'll be able to answer all the legal questions that were
8 asked previous.

9 But I do want the Commission to know that
10 prior to my filing of my formal complaint in August of
11 2005, the issues on Big Island had been ongoing for nearly
12 seven years with no resolve. We had made the issues known
13 to other residents as well as to the developer and tried
14 in numerous ways, numerous efforts for a continuing period
15 of time to reach a resolve to these issues with the
16 developer.

17 As stated in my formal complaint, it was
18 nearly seven years with no resolve. And the threat of a
19 lawsuit to me for the creatively imposed fees associated
20 with my nonmembership and my not receiving any service
21 that I decided to file my formal complaint with the
22 Commission.

23 Now, having said that, even prior to filing
24 my formal complaint with the Commission, I did six months
25 worth of research to find out if there was another

1 alternative. Obviously we are all, General Counsel,
2 Public Counsel, Respondents and Commission, at this point
3 are questioning the jurisdiction that you actually have in
4 this case. Being a layperson and doing the research that
5 I did, I researched various homeowners types of
6 associations with respect to utilities. I also -- I also
7 researched the 393 companies with respect to a possible
8 solution to our situation on Big Island.

9 And from the six months of research that I
10 did, ultimately the jurisdiction of the PSC fell more
11 closely in line with the resolve to our issues than
12 anything else did. So I respect the Commission in what
13 you are trying to accomplish in terms of resolve to this
14 case in that there are really no clear-cut defined
15 answers.

16 But I can tell you that standing here
17 before you today this very minute, I am being billed by
18 the Association. I am not a member. I have not ratified
19 the ratification document that bounds me to the terms and
20 conditions of the amended and restated covenants and
21 amended and restated bylaws of the Big Island Homeowners
22 Association.

23 This was not by choice. I do need to
24 explain that to you. When Folsom Ridge came to Big
25 Island, there were existing residents living there. There

1 was no utility system in place. Each and every resident
2 depended on a private well and a private septic system to
3 maintain their day-to-day lives. Folsom Ridge
4 aggressively and actively came to the existing residents
5 to purchase water and sewer taps for future connections to
6 the soon to be constructed water and sewer facility. This
7 was in the year 1998.

8 There was no mention at the time that
9 monies were exchanged and our agreements were made that
10 there would be any requirement of any membership in any
11 association affiliated with the purchase of our water and
12 sewer taps as a condition to our agreement to be able to
13 receive service. In fact, the Big Island Homeowners
14 Association did not become operational as a functioning
15 organization until almost two years later. Evidence that
16 we will provide throughout this case will support the
17 statements that I am making to you today.

18 After the fact, nearly two years later,
19 Folsom Ridge came to us asking us to join the association
20 then as an additional and conditional requirement to be
21 able to receive the utility service that we had originally
22 agreed upon with the purchase of our taps.

23 At this point in time, I must remind the
24 Commission that the residents were suspect that the system
25 had been installed incorrectly with the water and sewer

1 lines being in the same trench. We had brought this to
2 the attention of all three of the equal partners of Folsom
3 Ridge. I know that the Respondents have taken the
4 position not only in their testimonies but Mr. Comley here
5 today that Mr. Rusaw and Mr. Golden were acting as silent
6 partners.

7 In evidence that we will supply to the
8 Commission, in correspondences sent to all Big Island
9 residents, bearing the signatures of Mr. Golden, Mr. Rusaw
10 and Mr. Lees, they were all three equal partners in Folsom
11 Ridge at the time of the tap solicitation and purchases
12 and during the course of time that we as residents were
13 suspect the system had not been installed correctly.

14 For five years residents on Big Island
15 approached Folsom Ridge in numerous ways with regards to
16 the incorrect installation of the system, as well as DNR.
17 For five long years the residents of Big Island voiced
18 their concern with an improperly installed system.
19 Finally, with the involvement of Representative
20 Dr. Kenneth Cooper, we were able to have test digs
21 performed on Big Island to determine whether or not the
22 system had been installed incorrectly.

23 As a part of the evidence that we will
24 provide in our cases here during this hearing, we also
25 have letters from Folsom Ridge signed by Mr. Golden, Mr.

1 Rusaw and Mr. Lees at the time, two subsequent letters
2 under the signature of Mr. Golden and Mr. Rusaw
3 representing Folsom Ridge, assuring the residents that the
4 system had been installed correctly because they
5 themselves had done their own test digs.

6 After we were able to get DNR involved to
7 do some preliminary test digs, in fact, the system did
8 prove to be installed incorrectly with the water line and
9 the sewer line being in the same trench.

10 Now, having said that, if someone were to
11 approach you to ask you to join an association which had
12 been set up for the maintenance, operation and ownership
13 of a water and sewer utility where the water and sewer had
14 been installed in the same trench, would you join that
15 association and take on that ownership and liability?

16 That was one of the reasons why we chose
17 not to sign the ratification agreement and become a member
18 of the Big Island HOA, that combined with the fact that it
19 was not a part of the original agreement. And as I've
20 indicated, evidence that we will be supplying will
21 indicate that the Big Island Homeowners Association did
22 not become operational and functional until almost two
23 years later.

24 We have numerous amounts of evidence and
25 documentation that's already been provided in this case.

1 I don't know how much more of it you as Commissioners
2 would like to see, if any. I will try to condense my
3 opening remarks to address remarks that have been
4 mentioned earlier from other parties in this case, the
5 first of which I would like to identify and compliment
6 Mr. Comley on his presentation of the future development
7 of Big Island. In that presentation, it was beautifully
8 done and presented what the future of Big Island is
9 intended to be.

10 Myself filing a formal complaint, I was one
11 of nine complainants who filed individual formal
12 complaints. Our complaints have nothing to do with the
13 future of Big Island. Our complaints are based on the
14 nine years, including this minute before you today, of how
15 this utility has been operated, mismanaged and
16 misconstructured.

17 The photographs that Mr. Comley provided in
18 the slide show were wonderful. Our photographs that we'll
19 be supplying to you are not quite as wonderful or pleasing
20 or aesthetic. We will be showing you sewer leaks that
21 took in excess of three to four months to correct. In
22 addition, we'll be showing you photographs indicating that
23 there still exists water and sewer in the same trench, of
24 which has been brought to the attention of Folsom Ridge as
25 we speak and also the 393 companies.

1 The problems and issues that were outlined
2 in my formal complaint that was submitted 18 months ago
3 still exist this day, this very minute as I'm speaking
4 before you.

5 Mr. Comley made reference to the PUD, and
6 for those of you who may or may not be familiar with what
7 that term means, that stands for planned unit development,
8 which Folsom Ridge presented to Camden County Planning and
9 Zoning. And in this planned unit development, a part of
10 that was utilizing the existing water and sewer system on
11 Big Island for a part of what you saw in the future of Big
12 Island.

13 This original water and sewer system had an
14 initial capacity to service 80 homes. At the time that
15 the PUD was submitted, and as Mr. Comley made reference
16 to, I think it's approximately now 230 residences to be
17 served. There has been an addition of a sand filter bed
18 to the existing system, and that was done after formal
19 complaints were filed with the Commission.

20 I would also like to address that with the
21 aggressive sales and solicitation of Folsom Ridge to
22 existing residents for the purchase of water and sewer
23 taps, as a result of the complaint cases before the
24 Commission and a result of the Staff involvement, it has
25 since been determined that now there is an excess refund

1 residents for CIAC, which is the contribution in aid of
2 construction. Now, this becomes very important with the
3 asset transfer case. The reason being in the asset
4 transfer case these same tap fees of \$4,800 for sewer and
5 \$2,000 for water are being carried over as a part of the
6 same fees in the 393 companies.

7 Folsom Ridge, in consideration for the
8 assets being transferred, will be accepting these same
9 fees in the amount of \$4,800 for sewer and \$2,000 for
10 sewer (sic) for a future period of ten years as a
11 consideration for the transfer of the assets to the 393
12 companies with no cost or sales price associated.

13 However, one of the problems that we have
14 here, as has already been determined by the Commission
15 Staff, is that these figures are inflated figures and not
16 correct. So as a part of your responsibility and duty in
17 determining that, yes, this is a utility that should be
18 regulated by the Commission because it is functioning as
19 an unregulated public utility by providing service to
20 individuals that are nonmembers, and through the control
21 of the ownership of the utilities association by the
22 developer, you will also have to address the CIAC amount
23 that needs to be refunded to each and every individual who
24 purchased taps on Big Island and then will also have to
25 address that same fee structure in the approval or

1 disapproval of the asset transfer agreement to the 393
2 companies.

3 We've heard statements here today that as
4 we speak that there are no construction deficiencies noted
5 by DNR with the present system. We as Complainants do
6 intend to show you photographs showing that there are
7 deficiencies, and some of these deficiencies no regulatory
8 agency is willing to take responsibility for. And that's
9 extremely unfortunate because we are talking about the
10 life and safety and potential health risk of every
11 resident on Big Island.

12 Now, having said that and without being
13 disrespectful to DNR, we as residents on Big Island and we
14 as formal complainants would like to know what guarantee
15 there is by DNR that there are no deficiencies that
16 currently exist with this system. The reason being, DNR
17 signed off on the system the first time around saying that
18 it had been correctly installed. It took us five long
19 years with DNR to try to get the system correctly
20 reinstalled. We can't do this another five years. We've
21 been before you for 18 months.

22 As a part of my surrebuttal testimony, in
23 my reason for providing surrebuttal testimony, I quoted my
24 formal complaint, and ironically enough, nothing has
25 changed between my submission of my formal complaint

1 18 months ago and where the situation on Big Island is
2 today with regards to the water and sewer issues.

3 The problem, part of the problem has been
4 that the Big Island Homeowners Association has been an
5 unregulated entity. The 393 companies will also be an
6 unregulated entity. From the questioning that I've heard
7 this morning between Commissioners and respective parties,
8 I would tend to agree with any conditions that could be
9 applied to the transfer of the assets to the 393
10 companies. In reality, how can they be imposed?

11 And I think from the Complainants'
12 standpoint as well as all residents of Big Island, in
13 order to finally get a resolve to the many issues that
14 have been ongoing on the Big Island water and sewer
15 utility for now nearly nine years, we need regulation.

16 I would now like to address the
17 restricted -- the amended and restated covenants and
18 conditions as well as the amended and restated bylaws of
19 the Big Island HOA which I did not sign and I am not a
20 member. The ratification document that appears as an
21 integral part of these documents, by legal description
22 your property is listed and by signature you relinquish
23 the rights of your property by legal description to the
24 covenants and restrictions of the Big Island Homeowners
25 Association.

1 Now, because there are existing residents
2 on Big Island prior to Folsom Ridge purchasing properties
3 there, there were other restrictive covenants in place for
4 the respective subdivisions that were there. Property is
5 already governed by a separate set of restrictive
6 covenants as well as three other respective subdivisions
7 on Big Island.

8 Again, when we were approached about
9 signing and joining the Big Island Homeowners Association,
10 it was nearly two years after the fact of our agreements
11 with Folsom Ridge to purchase our water and sewer taps
12 with a reserved future right to connect at any time of our
13 choosing with no fees to ever be charged to us except when
14 we chose to connect, chose to receive service, we would
15 then pay for that service.

16 I am currently being billed and I have been
17 being billed for the eight years that I've been a resident
18 of Big Island. I am not connected. I am not a member,
19 and I don't receive any service.

20 I think Mr. Comley has referred to these
21 charges as being availability fees. If you will read the
22 restrictive covenants and conditions, I can't locate
23 availability fees in there anyway, and if I were, the
24 restricted covenants and conditions would only apply to
25 those individuals mutually agreeing by bilateral

1 signatures to become a member in the homeowners
2 association.

3 Mr. Comley has also indicated that the
4 transfer of the assets to the 393 companies would end the
5 arguments over membership and make the complaints moot.
6 Mr. Comley is incorrect. First of all, as we have noted
7 in our pleadings filed, and to correct Ms. Holstead's
8 statement, the 393 companies are still a membership
9 requirement association.

10 Having said that, we have individuals who
11 are currently connected to the water and sewer utility who
12 are receiving service who are not members. With the
13 transfer of assets to a 393 company, membership will be
14 imposed upon them as yet a conditional -- an additional
15 requirement to be able to continue to receive their
16 service.

17 Having said that, through membership
18 liability for this system is imposed. I am familiar with
19 the 393 statutes that says no individual member can be
20 held personally liable, but if the 393 companies are
21 involved in litigation, the cost of litigation has to be
22 absorbed somehow by someone. To my knowledge, the only
23 way that those costs would be absorbed would be through
24 special assessments or increased fees to its members.
25 That is a liability.

1 Also, the 393 companies are receiving as a
2 part of their negotiations with the developer, Folsom
3 Ridge, the utility as is. I stand here before you and
4 indicate that this was a utility that was installed
5 incorrectly and maintained that incorrect installation for
6 a period of yearly five to six years.

7 Now, we've been told that DNR has noted
8 that there are no current deficiencies within that system.
9 I again state, what guarantee do we have to that statement
10 since DNR did sign off on this system originally that was
11 installed incorrectly? So I think that is a concern of
12 liability.

13 I also point to the Staff's testimonies in
14 this case wherein there are deficits with regards to
15 necessary items that this system is currently in need of,
16 which are shutoff valves, a stand pipe and some other
17 things. So in my opinion, those are indeed liabilities
18 because someone has to absorb the cost of these or absorb
19 the inefficiencies of the system.

20 I think one of the primary questions that
21 I've heard raised this morning are issues with regard to
22 the jurisdiction of the PSC in this case is the for gain
23 by the developer. First of all, the amended and restated
24 covenants and conditions of the Big Island Homeowners
25 Association and the amended and restated bylaws of the Big

1 Island Homeowners Association allow the vote of lots,
2 which means that the developer has ultimate and total
3 control over the association and the operations of the
4 utility by the voting of lots.

5 Now, having said that, the for gain portion
6 of the statute that I have heard prefaced here several
7 times this morning in my opinion, which is strictly a lay
8 opinion, I guess I would ask the question, does the
9 statute strictly stipulate gain and define that as being
10 monetary? If not, then there are other gains that the
11 developer certainly has by having ultimate control over
12 this utility through the voting of lots.

13 In other words, and referring to the vote
14 that was taken to transfer the assets in the most recently
15 held meeting, Folsom Ridge voted 250-some lots. We only
16 have approximately 105 residential property owners on Big
17 Island. So you do the math. Who had control over the
18 transfer of the assets by the vote? The only member was
19 Folsom Ridge by voting their 250 lots.

20 Also, we've heard testimony that -- or
21 testimony has been filed and we've heard statements here
22 today indicating that the 393 companies are strictly
23 independent of the developer. We will provide evidence to
24 indicate both in the structure of the bylaws as well as
25 the Asset Transfer Agreement and statements made by

1 Ms. Holstead in writing under signature that the developer
2 should have control of the utility and should be able to
3 vote lots.

4 Also, in testimonies that have been
5 provided, the statement has been made that a bank account
6 belonging to the Big Island Homeowners Association will be
7 transferred to the 393 companies for a capital reserve.
8 If you will read the restrictive covenants, it clearly
9 indicates that with the dissolve of that association or
10 corporation, that any remaining assets be evenly
11 distributed among its members.

12 So part of the evidence I'll be supplying
13 in this case is a copy for each of you with regards to the
14 amended and restated covenants and conditions and amended
15 and restated bylaws.

16 I would like the Commission to know that
17 for the five years that we battled with DNR over the
18 incorrect construction of the facility, as well as the
19 membership requirement in the HOA now being an additional
20 requirement to be able to receive service, concerned
21 homeowners on Big Island sought the legal opinion of two
22 different attorneys. These legal opinions have been
23 provided in my formal complaint as evidence.

24 The legal renderings, legal opinions of
25 both attorneys indicated at that point in time, which was

1 nearly five years ago, that then this utility was
2 operating as an unlicensed public utility by billing and
3 servicing individuals who were not members and by the vote
4 being controlled by the developer.

5 MR. COMLEY: Your Honor, for the record, I
6 have objected to refer to legal opinions in Mrs. Orler's
7 testimony, Ms. Orler's testimony and a variety of other
8 things. I have been patient with respect to the remarks
9 she's made in her opening. I do not believe that the
10 matters she's been mentioning the last several minutes are
11 matters within the jurisdiction of the Commission, and I
12 have not objected on grounds perhaps this would be some
13 factual background that the Commission may be interested
14 in.

15 But as far as the complaints, what she's
16 referring to is beyond the scope of the complaints, and
17 the other thing would be legal conclusions of attorneys
18 that are not here to be visited with. Again, there could
19 be a number of legal opinions addressed today.

20 JUDGE STEARLEY: Thank you, Mr. Comley.
21 While I respect your specific objections, we will be
22 taking up many of those individually when testimony is
23 offered. At this time I will allow Ms. Orler to complete
24 her opening statement. Of course, Complainants do have
25 the burden in this case to provide evidence to prove the

1 various claims that they have made, but we will allow her
2 to continue with her opening statement. You may continue.

3 MS. ORLER: Thank you. I would also like
4 to indicate to the Commission that as a part of the
5 pleadings filed as well as in testimonies filed to this
6 point, that the Complainants in this case are objecting to
7 the transfer of assets so the 393 companies. We're
8 objecting to the imposed membership as now yet another
9 conditional and additional requirement to be able to
10 continue to receive utility service, and we are objecting
11 to the liabilities associated with receiving a utility as
12 is with a history and those liabilities now being imposed
13 through this required membership.

14 We have heard from Ms. Holstead that there
15 is a majority of residents on Big Island who favor the
16 transfer of the assets to the 393 companies. The
17 Complainants in this -- the Complainants as well as
18 Intervenors in this case have tried to make known to the
19 Commission that this majority vote is in question because
20 was it truly an informed vote.

21 Complainants and the Intervenors in this
22 case have requested copies of the bylaws of the 393
23 companies for numerous weeks. We requested, I believe it
24 was in December, a copy of these bylaws from Commission
25 Staff who had copies at that time, and we were told by

1 Commission Staff that that was their copy, so we were not
2 provided with copies. We then asked Mr. Comley for a copy
3 of the 393 bylaws. That request was not honored.

4 So in terms of the 393 bylaws being made
5 available to the residents to allow them an informed vote
6 to transfer these assets, these were only made available
7 three days prior to the vote, and at that point were only
8 made available to those individuals with Internet access
9 and through the kindness of Public Counsel in posting the
10 393 bylaws to their website. And I think the same was
11 also true for the Asset Transfer Agreement.

12 Now, having said that, some of the
13 information then that was presented to residents with
14 regards to their preference of a 393 versus regulation of
15 the PSC, I do have to indicate that probably the first and
16 foremost informed statement that residents would make if a
17 poll was taken was that the cost of regulation would be
18 much more with PSC as opposed to a 393.

19 I'm not disputing that matter, but I am
20 trying to indicate to the Commission that this majority
21 vote that supposedly exists on the island to transfer the
22 assets of the utility to a 393 company, in my opinion, was
23 not an informed vote by the residents. I feel that the
24 bylaws as well as the Asset Transfer Agreement should have
25 been made available at least 30 days prior to the vote to

1 allow individuals to review, question, what have you, with
2 these.

3 And I also state that I think equal
4 representation should have been made to these residents
5 with regards to regulation and what that might entail,
6 other than just the representation of an increased cost
7 and lack of control. And the lack of control I have
8 already addressed simply because a 393 association is not
9 a regulated entity, and that lack of regulation has placed
10 us before you and the Commission today in making that
11 decision.

12 I would will like to point out that in the
13 research I've done regarding 393 companies, to my
14 knowledge and to the best of my capabilities in
15 researching what little information is available, this is
16 still in its infancy stages.

17 To my knowledge, and correct me if I'm
18 wrong, I think that there are only a very few in
19 existence, and to my knowledge, I don't think that there
20 are any 393 companies that have been applied in a utility
21 situation of existing residents. To my knowledge, all of
22 the 393 companies that are in existence with regard to
23 utilities have been applied in an area of brand-new
24 development with no existing residents.

25 Now, having said that, since we have

1 existing residents who relied solely on their independent
2 wells and septic tanks, one of the requirements to hold a
3 board position with the 303 companies is that you must be
4 a member of both utilities. In my opinion, that is
5 discriminatory because for existing residents, some of
6 those residents may never be a customer of both utilities.
7 For the new residents on Big Island who have purchased
8 properties, none of those individuals have wells, so they
9 are dependent on the centralized utility for their water
10 service.

11 So having said that, there are still some
12 concerns with regards to the language of the 393 bylaws as
13 well as the language of the 393 Asset Transfer Agreement.

14 Again, the Complainants, Intervenors and
15 residents of Big Island would like to ask the Commission,
16 what guarantee do we have of safe and adequate service in
17 the future either with a 393 company that again is still
18 within the jurisdiction of DNR or even through a regulated
19 entity?

20 There needs to be some safeguards in place,
21 and I think that the system itself, we need to have
22 something in place for the future in case future
23 construction deficits are noted. Keep in mind, this is a
24 utility. Everything is buried and under the ground. How
25 do we know?

1 I think it was Mr. Thompson who addressed
2 the issue or the question from the Commission about the
3 imposed conditions being monitored, and I think his answer
4 was some of those would have to be in best practice.
5 Well, for nearly nine years with the Big Island Homeowners
6 Association, the amended and restated covenants and
7 conditions, the amended and restated bylaws and the
8 jurisdiction of DNR, this has been left up to best
9 practice. And I have to question the best practices in
10 this situation.

11 Also, I believe it was Mr. Thompson who
12 made the statement that the 393 companies are authorized
13 by law to accept the transfer of the utility assets to
14 become operational. I won't disagree with that statement,
15 but what I will ask, while they are authorized by law, are
16 they truly capable? Is one synonymous with the other?

17 And I would also say that the Big Island
18 Homeowners Association is authorized also by law, as well
19 as Folsom Ridge, LLC, but what has that proven with the
20 cases before the Commission now with regards to this
21 utility? Yes, the public health has been placed in
22 danger. Any time you violate the restrictions of DNR by
23 placing water and sewer in the same trench, public health
24 is placed at risk.

25 It was also brought to the attention

1 through a question earlier, come to us and we'll regulate
2 you. We went to Folsom Ridge and asked them to become
3 regulated. They did not. In my discussions with Staff
4 for nearly, gosh, I guess a little over two years now, in
5 the area in which I live at Lake of the Ozarks, which is a
6 rural but yet an area of great development, we've made
7 mention today of the Osage Water Company, I think that our
8 case before the Commission and the decision that you're
9 being forced to make in this case is the tip of the
10 iceberg. And that's why I feel that proper attention and
11 concern be given to our case.

12 There are many small utilities out there,
13 and I think that there are many small utilities that we
14 may or may not know about that are or are not operating
15 correctly. But I think our case before the Commission is
16 merely the tip of the iceberg.

17 Ms. Holstead stated that the Complainants'
18 actions in this case by filing formal complaints with the
19 Commission are impacting others on Big Island who are
20 connected to the utility service. I will make this
21 statement, because the problems were ongoing on Big Island
22 for nearly seven years. Ms. Holstead was a member and is
23 currently a member of the Big Island Homeowners
24 Association and was aware of the situation that existed on
25 Big Island but yet took no initiative towards a resolve,

1 as well as many other residents who did not.

2 So while we, the Complainants, may be
3 perceived as a minority or referred to as a disgruntled
4 few, I will assure you, the Commission, that we take very
5 seriously our complaints before the Commission. We very
6 thoroughly researched our complaints prior to filing these
7 complaints in terms of what they would entail, in terms of
8 what your jurisdiction would allow. We also researched
9 other options available, including the 393s. That is not
10 a resolve or an answer to the issues on Big Island.

11 So while we may not be the majority, we are
12 the ones who took the initiative to find a resolve to the
13 issues on Big Island.

14 I also want to remind the Commission that
15 we the Complainants and Intervenors in this case have made
16 a full disclosure to the Commission as well as the 393
17 companies as well as to the Respondents that if the
18 utility assets are transferred to the 393 companies,
19 litigation will be brought immediately against the 393
20 companies.

21 The reason being, again, as I stated
22 numerous times, the imposed membership in the 393
23 companies as yet a conditional -- an additional
24 requirement to be able to receive utility service, as well
25 as the liabilities that are imposed with that assumption

1 of imposed membership. So we make that full disclosure to
2 the Commission.

3 Reference has also been made to Lake of the
4 Ozark Water and Sewer Service has been hired by the 393
5 companies to continue the operations of the day-to-day
6 utility operations of the utility on Big Island. And
7 again, in the evidence that we will be supplying the
8 Commission, in various testimonies provided by the Staff,
9 we do have some questions concerning the practices of this
10 company.

11 Ms. Holstead has stated with the 393
12 companies there will no longer be fees assessed to
13 individuals who are not connected to the facility and who
14 are not receiving service. Complainants fully understand
15 that the restitution of fees are not within the
16 jurisdiction of the Commission. We've never once stated
17 that as a request for relief. Our request for relief has
18 been for a regulated utility.

19 Mr. Comley says that we, the Complainants,
20 opposed the application for certification by Folsom Ridge.
21 That is incorrect. Our opposition was to the
22 certification of Folsom Ridge. Complainants maintained
23 all through the application case that our utility needed
24 to be regulated. What we didn't understand and what made
25 no sense was certificating the very same individuals who

1 created the problem in the first place.

2 Having said all of that, we can provide
3 information to the Commission in terms of evidence that
4 will support that the Big Island Homeowners Association is
5 providing water and sewer service to individuals who are
6 not members and billing and servicing individuals who are
7 not members.

8 We can also provide through evidence that
9 Mr. Golden and Mr. Rusaw at Folsom Ridge are owning and
10 controlling the Big Island Homeowners Association. No
11 individual members have control over the functions of that
12 organization. Therefore, this should be a utility subject
13 to the regulation of your jurisdiction.

14 Thank you.

15 JUDGE STEARLEY: All right. Questions for
16 Ms. Orler, Commissioner Murray?

17 COMMISSIONER MURRAY: I'm not sure how to
18 best phrase the question, but I'd like to know if you
19 could put into a nutshell what it is that you would like
20 to have -- to see the Commission do.

21 MS. ORLER: I would like to see the
22 Commission regulate this utility.

23 COMMISSIONER MURRAY: This particular
24 utility?

25 MS. ORLER: Yes, on Big Island.

1 COMMISSIONER MURRAY: With the same
2 ownership?

3 MS. ORLER: Honestly, no, but I understand
4 that what I am requesting and the Complainants are
5 requesting has never -- would be setting a precedence for
6 the Commission. In other words, to allow Folsom Ridge to
7 maintain ownership but actually to appoint someone, I
8 don't know if a receiver would be even the correct
9 terminology in this case because we're not asking that
10 ownership of the assets be relinquished by Folsom Ridge,
11 but we are indicating or suggesting that Folsom Ridge over
12 the course of nearly nine years has not demonstrated the
13 necessary capabilities required in this case.

14 So therefore, if regulated, the ideal
15 situation would be for a separate individual to assume
16 day-to-day oper-- responsibility for day-to-day
17 operations, but I know that that's never been done.

18 COMMISSIONER MURRAY: Let me ask you this:
19 What do you think would provide you protection that you
20 are seeking by this utility being certificated by the
21 Public Service Commission versus a transfer to the 393
22 corporations?

23 MS. ORLER: The primary difference that I
24 see between being a regulated utility and the protection
25 afforded through that is basically an insurance, if you

1 will. There is a higher rate associated with the
2 regulation of this utility just simply for your services.
3 However, we as customers are not responsible for the
4 ownership, hence liability, of the utility. We are merely
5 a customer. We pay for the service that we receive.

6 Now, comparing that to the 393 companies,
7 that is homeowner owned, and the 393 companies are
8 accepting this utility as is.

9 COMMISSIONER MURRAY: So your primary
10 concern is not that -- in other words, you're not under
11 the impression that because it would be a certificated
12 company, all of your concerns that the company is not
13 being run as well as you would like to see it run or the
14 installations are not as good as you would like to see
15 them, you're not under the impression that we could change
16 that so long as they're in compliance with all DNR
17 regulations and things like that, are you?

18 MS. ORLER: No. We've witnessed the
19 compliance or lack thereof of DNR regulations over the
20 past nine years. I do see a difference, though, between
21 the ability of the PSC through regulation versus the
22 ability of DNR to enforce the regulations that are in
23 place.

24 COMMISSIONER MURRAY: I'm not sure what you
25 meant by that, but DNR does not enforce our regulations.

1 MS. ORLER: Correct. They don't enforce
2 theirs either. I guess that's the point I was trying to
3 make. We -- in various meetings held with the PSC Staff
4 and talking with various individuals, we are under the
5 understanding that regulation provided by the PSC, you
6 have more authority with your jurisdiction to enforce the
7 regulations than what DNR has.

8 As a matter of fact, in correspondence to
9 DNR, both verbally and in written form, I've asked various
10 DNR representatives if they have the ability to issue a
11 permit with certain specifications and requirements being
12 met to the recipient to receive that permit, do you not
13 also have the same authority to revoke that same permit
14 when these obligations are not being met?

15 And we were told by DNR that, no, they do
16 not. They have the ability to issue permits, but they do
17 not have the ability to revoke them. Did that answer your
18 question?

19 COMMISSIONER MURRAY: Partially. But I'm
20 still troubled by my perception, and maybe it's a
21 misperception, that you think that being regulated by the
22 PSC provides more assurances than it does. We have a lot
23 of regulated utilities that don't operate very well.

24 MS. ORLER: I understand that.

25 COMMISSIONER MURRAY: We also have no

1 ability to provide any stricter environmental regulations,
2 for example, than what is required by DNR or EPA.

3 MS. ORLER: Yes. I understand that.

4 COMMISSIONER MURRAY: And so long as
5 somebody is meeting those requirements, you might not be
6 happy with it, but there wouldn't be anything that we
7 could do beyond that.

8 MS. ORLER: But as part -- as I'm
9 understanding this, as a part of the tariff which is in
10 place for a utility to be regulated, there can be
11 conditions, there can be information provided by the
12 residents with concerns for high, medium and low risk to
13 monitor during the operations.

14 I've also suggested to Staff, it's been my
15 experience to this point, and this is still a nuance
16 before the Commission, I think that something that might
17 help the Commission is to have a paid position by two
18 residents of the community that would act as liaisons
19 between the Commission to help with this regulation and
20 oversight.

21 In other words, if a utility becomes
22 regulated, you yourself have indicated that you have a
23 number of utilities that are currently being regulated
24 that don't function or operate properly, I think perhaps
25 maybe a solution or a trial to help with that would be a

1 couple of residents from the area acting as liaisons or
2 watchdogs, if you will, to work with the Commission, to
3 let you know. You're not out there. You don't live this
4 utility day in and day out as we do.

5 But I can see a need in our case before the
6 Commission to try desperately to get a handle on a
7 situation not only with Big Island but I feel is
8 elsewhere.

9 COMMISSIONER MURRAY: Thank you. I
10 appreciate the thought and the preparation that you have
11 done as a nonlawyer to present this case. You're
12 obviously quite -- have been quite studious about it.
13 Thank you.

14 JUDGE STEARLEY: Commissioner Gaw,
15 questions?

16 COMMISSIONER GAW: I'll pass for now.

17 JUDGE STEARLEY: Commissioner Clayton?

18 COMMISSIONER CLAYTON: I have just a
19 handful of questions. You eventually reached a number of
20 the questions that I was going to ask.

21 First of all, I wanted to be clear on
22 whether you are saying that the covenants in the deeds
23 associated with your property, do they require membership
24 in this Homeowners Association?

25 MS. ORLER: No. The Big Island Homeowners

1 Association that is being referenced here today was
2 something that was initiated and something that was put
3 into place by Folsom Ridge.

4 COMMISSIONER CLAYTON: Okay. I want to be
5 clear on this, and I may be misunderstanding. Did you
6 purchase the property from Folsom Ridge where you reside?

7 MS. ORLER: No.

8 COMMISSIONER CLAYTON: You were there
9 before, correct?

10 MS. ORLER: I was there before. I
11 purchased, yes, from another property owner.

12 COMMISSIONER CLAYTON: And how long had you
13 been there prior to the Folsom Ridge development?

14 MS. ORLER: Actually, I was purchasing just
15 simultaneously with Folsom Ridge coming on to the scene.

16 COMMISSIONER CLAYTON: Okay. Are you
17 adjacent to the development?

18 MS. ORLER: As a matter of fact, that's a
19 very good question. I have a vacant lot on either side of
20 me that was Folsom Ridge property. One still remains a
21 vacant lot, and the other lot has since been built on in
22 the time that I've been there.

23 COMMISSIONER CLAYTON: So you live close to
24 John Ashcroft?

25 MS. ORLER: Yes. He's my neighbor.

1 COMMISSIONER CLAYTON: Really?

2 MS. ORLER: Uh-huh.

3 COMMISSIONER CLAYTON: Well, that will come
4 in handy later on.

5 And just to be clear, kind of following up
6 on what Commissioner Murray says, you are seeking that
7 this Commission assert jurisdiction over the entity as it
8 is today providing service and regulate them as a public
9 utility?

10 MS. ORLER: Yes.

11 COMMISSIONER CLAYTON: And have ongoing
12 supervision and regulatory direction, I suppose?

13 MS. ORLER: Yes, sir.

14 COMMISSIONER CLAYTON: Are you testifying
15 on whether or not you believe -- or is it your argument
16 that the transferee, the 393 corporation, are you arguing
17 that they do not have the capability and wherewithal to
18 act as a -- not as a public utility, but as an operator of
19 a water and sewer system?

20 MS. ORLER: I am given the situation of our
21 water and sewer utility. If our water and sewer utility
22 comes without a history, and understanding that there's no
23 perfect utility out there, but if ours were coming without
24 a history, meaning deficits in construction, deficits in
25 operation, as well as a history among the homeowners now

1 that has since been divided over this issue, I would say
2 that -- and in a new development, I would not be opposed
3 to a 393. But what I am saying is a 393 does not address,
4 correct or resolve any of the issues on Big Island. It
5 only trans-- it's merely a transference of the issues from
6 one unregulated entity to another.

7 COMMISSIONER CLAYTON: Okay. Thank you.

8 JUDGE STEARLEY: Commissioner Appling?

9 COMMISSIONER APPLING: Judge, I don't think
10 I have any questions. I think Commissioner Clayton asked
11 the one question. I wanted to know whether you had been
12 living there prior to the construction of all of the new
13 development, and you answered that question yes.

14 MS. ORLER: Well, no. Actually, it's just
15 been simultaneous. Some of the other Complainants have
16 been there 35, 40, 60 years. I purchased my property in
17 1998, which was simultaneous with Folsom Ridge purchasing
18 their property.

19 COMMISSIONER APPLING: And you still get
20 your water from a well?

21 MS. ORLER: Yes. Yes, sir, I do.

22 COMMISSIONER APPLING: And your sewer
23 service, how does your sewer service operate?

24 MS. ORLER: I have my own private septic
25 tank. And something I should explain to the

1 Commissioners, if you'll allow me the opportunity, that
2 even with our centralized utility that is installed on the
3 island, it is a misnomer to term it a sewer utility.
4 Actually, it's wastewater. So everyone who is connected
5 and receiving service from this current utility still has
6 to have a septic tank because it's only gray water being
7 treated by this facility. Solids are still being treated
8 in the septic tank.

9 COMMISSIONER APPLING: So a big white truck
10 shows up at your house every six months and pump out your
11 sewage?

12 MS. ORLER: Pumper trucks, yes, sir.

13 COMMISSIONER APPLING: John don't have any
14 questions on that?

15 MS. ORLER: He has questions on several
16 things.

17 COMMISSIONER APPLING: Thank you very much
18 for your testimony.

19 JUDGE STEARLEY: Commissioner Gaw?

20 COMMISSIONER GAW: I don't want to get too
21 much into this because a lot of what I'm hearing probably
22 ought to be testimony rather than opening, but I --

23 MS. ORLER: I apologize.

24 COMMISSIONER GAW: No. That's okay. I
25 just -- there is a difference in how we can treat it in

1 the record, and so some of this you may have to repeat.

2 MS. ORLER: Oh, okay.

3 COMMISSIONER GAW: In regard to -- in
4 regard to the issue of the 393s, is there -- is there
5 anything that troubles you about the way 393s function as
6 to the membership and the responsiveness of the board of
7 directors to the membership that causes you concern just
8 in regard to whether or not you think that a board of
9 directors of a 393 corporation in this case would not take
10 care of some of the issues that you have?

11 MS. ORLER: And you're talking about 393
12 application to the Big Island utility and not in general?

13 COMMISSIONER GAW: Yes.

14 MS. ORLER: Yes, sir, I do. One of the
15 board members knowingly and willingly has water and sewer
16 in the same trench. Now, this was contracted at the time
17 that he built his home there, but it has been brought to
18 his attention because he is connected to the system. And
19 as long as he is connected to the system and knowingly and
20 willingly has water and sewer in his same trench, then
21 that does create a health risk.

22 Ms. Holstead has stated in numerous
23 correspondences under signature supplied to residents that
24 she disagrees with the PSC in a homeowners association,
25 that the developer should not have control. That will be

1 presented later in evidence. So Ms. Holstead has made
2 those statements under signature numerous times. So I
3 fail to see how she cannot be biased in her situation then
4 with the 393 and how that would not interfere with her
5 abilities to represent the residents of Big Island in a
6 proper capacity as president of the 393 companies.

7 COMMISSIONER GAW: Is it your feeling that
8 it would not -- that you would not be able to elect a
9 board of directors if you -- if those of you who are not
10 hooked up now did hook up that would be -- that would
11 address those issues that you have? Do you think you'd
12 still not be able to impact and cause a difference in the
13 quality of service and health and environmental concerns?

14 MS. ORLER: No, sir, I do not, and let
15 me -- if you don't mind, can I explain myself there?

16 COMMISSIONER GAW: Sure.

17 MS. ORLER: At Lake of the Ozarks, it is a
18 resort community. Out of the 105 residents that we have,
19 less than one-fourth of those residents are permanent
20 residents that live there day to day. Most people are
21 only there on weekends or for short stints during the
22 holiday season. And when they are there, water and sewer
23 is the last thing on their minds. They want to fish.
24 They want to ski. Sadly to say, and disappointingly to
25 say, there is a great deal of apathy on our island.

1 Now, having said that, Folsom Ridge is the
2 developer. They are there. They will be there. They
3 will be there every day. So the turnout for the past
4 eight years for meetings of the present Big Island
5 Homeowners Association, a large turnout at those meetings
6 would maybe be 20 people. That would be large. And most
7 times, I think any of the other residents would confirm my
8 number, 10 to 15.

9 So having said that, no, I don't think the
10 ability there over time to reelect different individuals.
11 As a matter of fact, in one of the testimonies provided by
12 the vice president, Mr. Gail Schneider, board member of
13 the 393s, he has already indicated that this first five
14 member board, they were having difficulty finding the
15 fifth individual to fill the position. Now, this is the
16 first time around and they don't even have any members.
17 So how is that expected to get any better as this
18 proceeds?

19 Again, we live in a resort area. People
20 don't want to maintain a board position. The people that
21 do are going to be exhausted from serving and reserving
22 again. I just don't -- I don't see it, no, sir.

23 COMMISSIONER GAW: Okay. That's all I have
24 right now. Thank you very much, ma'am.

25 JUDGE STEARLEY: All right. Thank you,

1 Ms. Orlor. Mr. Pugh, would you like to make an opening
2 statement?

3 MR. PUGH: My name is Ben Pugh. I am the
4 senior resident, I believe, of Big Island. Like
5 Mr. Comley says, I bought on Big Island in 1962. So I can
6 assure you I have seen one heck of a lot of growth over
7 the years. I believe it would be fair to say there might
8 have been four or five houses on Big Island when I moved
9 there. So fortunately for me, I did get a pretty good
10 chance to get a pretty decent lot because I had a good
11 pick.

12 It would be kind of hard for me to follow
13 up on anything that Ms. Orlor hasn't already mentioned,
14 but I would like to -- I did take a few notes, which she
15 covered a lot of them.

16 Mr. Thompson mentioned that the best of his
17 knowledge there wasn't any danger, any sewer -- there
18 isn't any water contamination problems or dangers related
19 to that on Big Island. I -- with the history that has
20 occurred since 1998, or actually 1998, yes, because they
21 actually put in 4,600 foot originally without even a
22 permit, and that -- that original 4,600 foot, the sewer
23 and water lines was in the same trench. I saw -- I can go
24 back to 1998, but actually the permit wasn't even allowed
25 for construction until January the 5th of 1999 -- of 1999.

1 I don't see how Mr. Thompson can say with
2 the past history that there has been no dangers. For one
3 thing, I -- I have -- at the very beginning when they came
4 on the island, I was very, very excited about a community
5 sewer system in particular, and I actually helped Mr.
6 Lees, one of the partners of Folsom Ridge, I actually
7 helped him recruit homeowners, try to convince the
8 homeowners that this community system would be the way to
9 go. And I'll be quite frank with you, I still feel the
10 same way today. But a system has got to be put in
11 according to the regulations.

12 I have a problem with some of the
13 deposition that I heard just this week from the DNR, I
14 have a problem that they aren't really -- when they --
15 when they buy off a system and give a permit, they
16 actually are not buying the complete system. Basically,
17 the service lines are not under the jurisdiction of the
18 DNR. I'm sure that you probably are aware of that.

19 Basically, all the DNR has jurisdiction
20 over is the mains, and from the mains to where you can go
21 down to each individual house, there is no jurisdiction.
22 So this bothered me. As a matter of fact, I started
23 asking questions about this during the installation, and I
24 find it alarming that the DNR tells a corporation that
25 your system is okay when they aren't even taking into

1 consideration half of the system.

2 Now, that's not -- that's not Folsom
3 Ridge's fault. But some of the pictures we have are --
4 are of the -- of the distribution system, which have no
5 regulation. So that is -- that creates a lot of the
6 problems of why we are here today, this lack of regulation
7 for these service lines.

8 I have pictures of -- of an upright with a
9 sewer valve and a water valve in that same upright. This
10 is, according to regulations, not ten foot apart. These
11 are just sitting right by each other. I know in my home
12 when I have a water leak, the first place I'm going to get
13 that thing is in a valve, my water valves. How many of us
14 have had to change water valves?

15 So basically we've got the weak part of the
16 system right here together, the water and the sewer, which
17 is not good by either the DNR codes or the national codes.
18 So anyway, I and some other homeowners back in 2000, we --
19 we contacted the DNR, and we had -- we had some pictures
20 of a lot of these service lines, and they said, yes,
21 Mr. Pugh, you're right, these shouldn't be like this, but
22 we can't help you. There's nothing we can do for you
23 because we have no jurisdiction.

24 So basically what we have here, we have the
25 mains coming around the island with these service lines

1 coming off of the mains. So if you have a problem in
2 these service lines, you have nobody to go to. I think
3 that's enough on that.

4 I did make some notes, but I think
5 Ms. Orler covered most of them. I'll be real honest with
6 you. I didn't even know that I would be up here
7 today. I didn't know what your procedure was. I'm not a
8 lawyer. I'm definitely not a speaker, and I apologize for
9 that. I'd like to look my notes over here just a little
10 bit.

11 I -- I am one -- I am one of the homeowners
12 that she referred to that is receiving service and I am
13 not a member. In January of 1999 when I put my \$4,800
14 down for a -- to help build this system and to receive a
15 sewer tap, I -- I had an agreement with Folsom that I
16 could hook up at any time of my choosing, and I would not
17 be charged for anything until the time that I hooked up.

18 And actually, that was -- basically, it was
19 a very simple agreement, but that was just about all there
20 was to the agreement. There was absolutely no mention to
21 me at the time I put my \$4,800 into this sewer that I
22 would ever have to be a member of anything. I -- like I
23 said, I still feel like I have an agreement with Folsom
24 Ridge, that that agreement being that I -- my only
25 requirement is to pay my bill.

1 There is other cases on the island similar
2 to mine. I -- I expect Folsom Ridge to honor that
3 agreement. I see no reason why I should be hooked with a
4 liability. I disagree with Ms. Holstead. I think there's
5 got to be some liabilities because if you get hit with a
6 bunch of lawsuits, somebody's got to pay the -- somebody's
7 got to pay that.

8 So I feel that a 393 is -- as Ms. Orler
9 said, it's just going from one mess into another because I
10 see no accomplishment by going to a 393. Ms. Orler
11 touched on this to some degree. I am convinced within two
12 years Folsom Ridge will have complete control of this
13 system. They have a lot of employees on Big Island.
14 Well, I won't say a lot of employees, but they do have
15 employees on Big Island who are going to vote with them.
16 They have -- they have the real estate people that
17 represent them live on Big Island.

18 In the time period that this Big Island HOA
19 has been in effect, I have never seen anybody oppose
20 Mr. Golden at any of the meetings, and I -- even though
21 I'm not a member, I've attended most of the annual
22 meetings, and I have yet to see anybody oppose them on
23 anything.

24 And during that period, again like
25 Ms. Orler said, these people had to be aware that this Big

1 Island HOA was operating as an unlicensed public utility
2 because we certainly were not bashful about voicing our
3 opinions on that.

4 In the year -- going back to the year 2000,
5 in April of 2000 was the first time -- first time that I
6 was made aware that they expected me to ratify covenants
7 and become a member. Keep in mind, I -- I put my \$4,800
8 down on this on January of 1999. No mention was made of
9 the -- of having to join anything.

10 And then in November of 1999, when I
11 connected to the system, there was no mention to me that
12 there were -- that this was going to be run and that I
13 would have to be -- this was going to be run by an HOA and
14 that I was going to have to become a member.

15 So I refused because of my -- what I knew
16 by that time that I knew that this system was installed
17 improperly, sewer and water in the same trench for
18 approximately, I don't know, I'd say around three miles,
19 two and a half, three miles. That's just a guess.
20 But it is -- it is a substantial system covering pretty
21 good area..

22 I think that is pretty well -- let me check
23 again, see if I missed something here. I would -- I'd
24 like mention -- I'd like to mention Mr. Comley, like
25 Ms. Orler did, his pictures of the new Villas going in.

1 They are beautiful. I think they've done a beautiful job
2 on what they've done. But my problem isn't with what's on
3 top of the ground. It's what's underneath there that
4 bothers me.

5 Another point I'd like to make. I -- lost
6 it. Lost my thought. Sorry. I think -- I think that
7 pretty well states what I have.

8 JUDGE STEARLEY: Questions from the
9 Commissioners, Commissioner Gaw?

10 COMMISSIONER GAW: No.

11 JUDGE STEARLEY: Commissioner Clayton?
12 Commissioner Appling? Thank you very much, Mr. Pugh.

13 MR. PUGH: Thank you.

14 JUDGE STEARLEY: Opening statement from
15 Cindy Fortney.

16 MS. FORTNEY: Sorry I wore my jacket, but
17 I'm still cold. I'm sitting right around that vent.
18 Probably be shaking here, too. I'm cold.

19 First of all, I live right next door to
20 Ashcroft, his property, and to get the record straight, he
21 no longer has a house there. He sold that. He does own
22 three 50-foot lakefront contiguous lots, and hopefully
23 he's not going to build on them. The rumor is that he's
24 going to keep them and hand them down to his grandkids,
25 great-grandkids.

1 Basically, I agree -- I won't say
2 basically. I fully agree with everything that Cathy and
3 Ben have said, so I'm not going to repeat it. I'm sure
4 you probably read my complaints, plus some of the
5 testimony and whatever else has already been submitted.

6 The only difference in my complaint than
7 theirs is there's some additional -- doesn't have anything
8 to do under the jurisdiction of the PSC. However, from a
9 personal standpoint and from a property owner, it does,
10 and that is that they, meaning Folsom Ridge, interfered
11 with two different real estate transactions, one the house
12 that my dad sold, and one that the house that I live in
13 now that we bought. Had to do with membership issues.

14 JUDGE STEARLEY: Excuse me. Ms. Fortney,
15 could you please speak into the microphone?

16 MS. FORTNEY: I'm sorry.

17 JUDGE STEARLEY: That will help with our
18 recording. You can bend that toward you.

19 MS. FORTNEY: Is that better?

20 JUDGE STEARLEY: Thank you.

21 MS. FORTNEY: Basically we're being -- it
22 has to do with membership issues where we're being billed
23 but we're not connected, and we are not -- we're not
24 getting any service, and -- but we still keep getting
25 billed even though we're not a member of the Association.

1 In one of the transactions, when I went to
2 buy the house that I'm in today, we had to pay \$14 for
3 back fees or actually future fees I guess for the next
4 couple of months, but I didn't ever get any paper on what
5 the HOA was, any letter of ratification or anything like
6 that. So we never joined anything. I had to pay that
7 \$14, and we still get billed. So I'm just one of those
8 people who's not connected, not a member, but I get
9 billed.

10 The reason I want to see regulation from
11 the Public Service Commission is I believe from what I've
12 seen and what I've read and the way I understand it is
13 that you have -- you go above and beyond best practices as
14 far as regulations with the DNR, and I think because you
15 also look at it from the holistic view, meaning billing,
16 membership, regulation of the system itself. I think that
17 is what's needed. I think -- I think that's the best
18 reason that we need to be under regulation from the Public
19 Service Commission instead of just a 393 or homeowners
20 association. That's basically it.

21 JUDGE STEARLEY: Any questions from the
22 Commissioners? Commissioner Gaw? Commissioner Clayton?

23 COMMISSIONER CLAYTON: Just one question.
24 Can you tell me, is there any difference in position among
25 the pro se parties? Are you-all aligned on every issue,

1 or that you're aware of?

2 MS. FORTNEY: Yeah. I believe so. Like I
3 said, the only additional comment that I wanted to make is
4 I didn't agree with the real estate transaction issues
5 that we had postponing or -- even though it was only a
6 couple hours, ultimately, you know, I guess the people
7 that bought my dad's house, they really didn't want to buy
8 the house. They were told that if they didn't sign the
9 letter of ratification right then, they would never ever
10 be able to hook up to the system. We knew that that
11 wasn't true, and they ended up not signing it anyway, and
12 now they are hooked up to the system.

13 So it's one of these things where it's kind
14 of a bullying situation. You feel like you're being
15 bullied into something. Then if you don't do it, you
16 know --

17 COMMISSIONER CLAYTON: I think I was asking
18 more specifically on relief that you're requesting. Each
19 of the pro se participants are aligned, would you --

20 MS. FORTNEY: Right, that we want
21 regulation.

22 COMMISSIONER CLAYTON: You-all are on the
23 same page, I guess?

24 MS. FORTNEY: I believe so.

25 JUDGE STEARLEY: Commissioner Appling?

1 Thank you, Ms. Fortney. We have one final person for
2 opening statement, Stan Temares.

3 MR. TEMARES: My name is Stan Temares. I'm
4 at 1836 Big Island Drive. I am one of the seasonal
5 residents on the island. I don't live there yet, but plan
6 to retire to the island, hopefully after everything's
7 corrected.

8 I wanted to agree with everything that
9 Cathy Orlor has already stated. I've got some items that
10 I think that should be brought up that are questionable
11 items that the Commission ought to hear. One of them was
12 the way I had found out about the water system and the
13 four-inch perimeter pipe around the island and some issues
14 on the quality and how the system was put in.

15 After I bought my home in September of
16 2001, a neighbor had brought it to my attention. My kids
17 were swimming at our dock. The sewer leak with wastewater
18 in it was running down in between my house and
19 Mr. Stoyer's house, which Mr. McDuffey calls the Stoyer's
20 Spring. Mr. McDuffey had checked that water, said it was
21 potable water, nothing to worry about. But Mr. Stoyer
22 took tests of that water, found out that it was sewer
23 water, wastewater, and had documentation made in case
24 anything ever came up.

25 Well, sorry that Mr. Stoyer died of cancer,

1 but he would have been one of the people you would have
2 been questioning today if he'd still been around. But it
3 was four months for that pipe to be dug up and repaired,
4 and it was brought to the developer's attention numerous
5 times by numerous people, even people walking around the
6 island that could see the waste running across the road to
7 Mr. Stoyer's property.

8 That's just one of the things that bothered
9 me according to the quality of workmanship and the
10 management of Folsom Ridge and the work that they had
11 done. I think that the -- the Commission in the
12 considerations of what they're doing right now going to
13 decide on a 393 or possibly certificating Folsom Ridge to
14 be the existing utility company, the present -- the
15 present 393 as it's proposed, I don't believe those people
16 have the management ability for operating the water and
17 sewer system.

18 They may be able to do the billing. They
19 may be able to do the management and the phone calls to
20 get someone out for repair. I don't think they have any
21 experience amongst any of them to take on that role and be
22 responsible for the number of residents on that island to
23 take on that 393.

24 Folsom Ridge has got -- has got quality
25 people. I have my doubts about Mr. McDuffey because of

1 certain things that's come up, and you'll hear that later
2 on. But they do have people who can work on the system,
3 and they did respond in timely manners. All right. But
4 the quality of the initial installation, the existing
5 problems that still have not been corrected are still a
6 big issue on Big Island.

7 A lot of the residents that were at the
8 January meeting that voted to elect the 393 to go in,
9 again, have not seen any kind of covenants or bylaws other
10 than what was posted on the computer, and if you could
11 take a poll, I really doubt that 10 or 15 people actually
12 went through and read them and understood them. I think
13 they went by hearsay, their friends next door, their
14 neighbor's said they're voting for it so they voted for
15 it, and yet they still don't accept -- they don't
16 understand what they are accepting as far as
17 responsibilities once a 393 has been issued.

18 Again, I am one of the people that will
19 probably bring litigation against the 393 as soon as it's
20 brought in because I don't believe in being a forced
21 member. I was never told of an HOA when I first moved in.
22 I was never given a copy of the covenants, and I never
23 signed a ratification. I don't know what the conditions
24 are. I've got covenants now, but I got it through a
25 request of a neighbor, made me a copy and now I've got

1 one. I've read it. I understood it. And from all the
2 evidence that's going to be presented, you'll see that
3 September 1st of 2006, the system as presently installed
4 was supposed to have been transferred to the existing
5 residents. I have yet to see any documentation showing
6 that that's been done.

7 I believe at the same time that's when
8 there was no board members for the existing HOA, and I
9 think in October that's when they started the new forced
10 393 system that's in progress right now, and it's what,
11 four, five months. Other than that, the same people that
12 are on that board had no interest, no concerns and did not
13 bother to even get involved with the system that's been
14 going on for the last seven or eight years.

15 There has been numerous times that leaks
16 have been on the island and people walking their dogs or
17 jogging or so on and so forth has reported them. There
18 has been issues. The supply lines are the service lines
19 that go underneath the roads, as was already brought up.
20 You've already heard this, and you're going to hear it, I
21 guess throughout this hearing. Nobody has taken any
22 jurisdiction for them.

23 I don't know if those service lines going
24 underneath the road, if any of them -- if there's ever a
25 contamination issue to a resident's home, there is no way

1 to isolate them from the existing supply line that goes
2 around the perimeter of the island. There are no
3 isolation valves. I don't know what Mr. McDuffey will
4 reply to that. I'm sure it's probably not an issue to him
5 because he doesn't live there. But it's an issue to me as
6 a resident, with me and my four kids and with grandkids
7 and my future plans retiring down there.

8 I would like to be assured that all these
9 errors and this poor workmanship is corrected before the
10 Commission makes a decision or can do anything to add to a
11 393 so that these things can be corrected before they walk
12 away.

13 That's all I've got.

14 JUDGE STEARLEY: Questions from the
15 Commissioners, Commissioner Gaw?

16 COMMISSIONER GAW: Thank you very much,
17 sir.

18 JUDGE STEARLEY: Commissioner Clayton?
19 Commissioner Appling?

20 COMMISSIONER APPLING: Judge, I have no
21 questions, but thank you for coming up. Appreciate it.

22 MR. TEMARES: Thank you.

23 JUDGE STEARLEY: Thank you, Mr. Temares.
24 At this time we are going to break for lunch, and we will
25 resume approximately 1:35, and we will begin with our

1 first witness, Ms. Orler.

2 (A BREAK WAS TAKEN.)

3 JUDGE STEARLEY: All right. We are back on
4 the record, and I understand that Ms. Heintz needs to
5 enter her appearance on behalf of the Staff of the
6 Missouri Public Service Commission at this time. If you
7 would please do so.

8 MS. HEINTZ: Yes. Thank you. Jennifer
9 Heintz for the Staff of the Missouri Public Service
10 Commission, P.O. Box 360, Jefferson City, Missouri 65102.

11 JUDGE STEARLEY: Thank you, Ms. Heintz. We
12 are returning, at this time going to begin with calling
13 our first witness, which is Ms. Orler. Ms. Orler, when
14 you come to the stand, you will need to bring with you
15 copies of your premarked exhibits from this morning, your
16 testimony, and if you have any additional documentation
17 you intend to offer into evidence as part of your direct
18 testimony, you need to bring those documents with you and
19 we will mark those to be entered into evidence. If you'll
20 bring those items with you to the witness stand.

21 I'm not sure how many additional documents
22 you may wish to be offering. If there's quite a number of
23 them, we may wish to go ahead and premark them or number
24 them prior to starting to offer them all for admission.
25 How many documents do you think you have that you're going

1 to offer in addition to your prefiled testimony?

2 MS. ORLER: Now, when you say in addition
3 to my prefiled testimony, the court reporter already has
4 those copies.

5 JUDGE STEARLEY: That is correct, and those
6 have been marked. You may need a copy to refer to.

7 MS. ORLER: Yes, but I don't have that. I
8 gave her -- I just brought her a copy. Can I borrow those
9 copies back?

10 JUDGE STEARLEY: Yes, you can borrow those
11 back from the court reporter.

12 MS. ORLER: I probably have an estimated
13 maybe 50 different pieces of evidence.

14 JUDGE STEARLEY: Is that 15 or 50?

15 MS. ORLER: 50, 5-0.

16 JUDGE STEARLEY: 50?

17 MS. ORLER: 50, uh-huh.

18 JUDGE STEARLEY: Well, I suggest we go
19 ahead and get them all premarked, then, because it's going
20 to be rather cumbersome to mark them as we go along. So
21 you will need to distribute your copies, one to the court
22 reporter, copies to the Bench, copies to opposing counsel,
23 and we will go -- once you've passed those out, we will go
24 through them one by one, titling them and numbering them.
25 We will be picking up with Exhibit No. 21 as we have 20

1 marked at this point.

2 I don't think there's any need for us to
3 stay on the record for this, so we can go back off the
4 record.

5 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

6 (EXHIBIT NOS. 21 THROUGH 74 WERE MARKED FOR
7 IDENTIFICATION BY THE REPORTER.)

8 JUDGE STEARLEY: We are back on the record.
9 Ms. Orler has taken the stand. Ms. Orler, we're going to
10 begin by swearing you in. If you'd please raise your
11 right hand.

12 (Witness sworn.)

13 CATHY ORLER testified as follows:

14 QUESTIONS BY JUDGE STEARLEY:

15 Q. All right. Being that you are a pro se
16 complainant, I'll going to ask you a short series of
17 foundational questions regarding the testimony you've
18 prefiled in this case, which will then be offered into
19 evidence. At that time we will take objections and rule
20 on those to this testimony, after which we will allow you
21 to offer the additional documentation you have presented
22 and we have now premarked into evidence, and we will take
23 objections on those.

24 Once we get through all the objections to
25 the filed testimony and documents, will you be tendered

1 for cross-examination.

2 Would you please state and spell your name
3 for the record.

4 A. Cathy Jo Orler. Cathy is spelled with a C,
5 C-a-t-h-y, middle name Jo, J-o, last name, Orler,
6 O-r-l-e-r.

7 Q. Are you the same Ms. Orler who caused to be
8 prepared and filed in this proceeding certain direct,
9 rebuttal and surrebuttal testimony in question and answer
10 form?

11 A. Yes, I am.

12 Q. And is your direct testimony marked as
13 Exhibit 1 in this proceeding the same direct testimony you
14 have offered for both cases in this matter, WC-2006-0082
15 and WO-2007-0277?

16 A. Yes, it is.

17 Q. Do you have these exhibits in front of you?

18 A. Yes, I do.

19 Q. And is your rebuttal testimony marked as
20 Exhibit 2 in this proceeding the same rebuttal testimony
21 that you've offered in both of these cases?

22 A. Yes, it is.

23 Q. And is your surrebuttal testimony that you
24 have before you marked as Exhibit 3 the same surrebuttal
25 testimony you have offered in both testimonies?

1 A. Yes.

2 Q. Do you have any -- and you have copies in
3 front of you. Do you need to make any changes to any of
4 your testimony, direct, rebuttal or surrebuttal at this
5 time?

6 A. I did not enter into evidence the schedules
7 that appear in, I believe it was my surrebuttal testimony.

8 Q. Okay. Are those part of the documents we
9 already had premarked?

10 A. No, but they were filed with my testimony
11 in EFIS.

12 Q. They were prefiled?

13 A. Yes.

14 Q. Along with the testimony?

15 A. No, in EFIS. They were -- accompanied my
16 testimony in EFIS.

17 JUDGE STEARLEY: Okay. Do all the parties
18 have a copy of these schedules?

19 MR. COMLEY: I don't know what schedules
20 she's referring to.

21 JUDGE STEARLEY: I'm not sure I do either.

22 MS. ORLER: When we filed our testimonies
23 and we indicated in the text of our testimonies that there
24 was a schedule, and when it was submitted via EFIS system
25 electronically, the schedules are there.

1 MS. HEINTZ: I'm sorry. Ms. Orler, did you
2 say this was your rebuttal or surrebuttal testimony?

3 MS. ORLER: I believe surrebuttal. Are you
4 finding schedules in rebuttal?

5 MS. HEINTZ: I'm not finding any schedules
6 on any of your testimony.

7 MR. COMLEY: Your Honor, that's what I'm
8 finding as well. In fact, I don't recall Ms. Orler
9 referring to any schedules in her surrebuttal testimony at
10 all.

11 MS. FORTNEY: There were three or four.

12 MR. COMLEY: There's no reference or
13 identification of schedules in her testimony, as I recall.

14 JUDGE STEARLEY: Ms. Orler, do you have
15 copies of these schedules with you?

16 MS. FORTNEY: Cathy, they were listed as
17 CO Schedule 1, CO Schedule 2, CO Schedule 3 and CO
18 Schedule 4. It was your surrebuttal. It was submitted,
19 was it last Friday?

20 MS. ORLER: Yeah. And I do find CO
21 Schedule 4 on page 23 of my surrebuttal.

22 MR. COMLEY: I see them now.

23 MS. HEINTZ: I have found Schedules 1, 2
24 and 3. I still don't have Schedule 4.

25 MS. ORLER: Schedule 4 is on page 23 on

1 line 12 of the surrebuttal.

2 MS. HEINTZ: Page 23, line 12 just says CO
3 Schedule 3.

4 MS. ORLER: CO Schedule 4.

5 MS. HEINTZ: In your surrebuttal testimony,
6 page 23, line 12?

7 MS. ORLER: Uh-huh.

8 MS. HEINTZ: Says CO Schedule 3.

9 MS. ORLER: I'm looking at Surrebuttal for
10 Case No. 0082 and 0277.

11 MS. HEINTZ: Yes.

12 MS. ORLER: I'm on page 23, line 12, it
13 says CO Schedule 4.

14 MS. HEINTZ: Not in my copy. It says CO
15 Schedule 3, and I only have Schedules 1, 2 and 3 attached
16 to the testimony.

17 MS. FORTNEY: 3 and 4, one was an envelope
18 that had a date on it that had a --

19 JUDGE STEARLEY: Ms. Fortney, while we have
20 a person on the stand and the attorneys are talking should
21 be the only people talking at this time.

22 MS. HEINTZ: Your Honor, may I approach the
23 witness with her testimony so she can show me what she's
24 talking about?

25 JUDGE STEARLEY: Yes, you may.

1 MS. HEINTZ: Thank you.

2 JUDGE STEARLEY: I am showing copies of CO
3 Schedules 1, 2 and 3 in surrebuttal testimony.

4 MS. ORLER: I think I figured out the
5 problem. When I made copies for the Commission, I
6 utilized my Word document, and there had been --

7 JUDGE STEARLEY: You can be seated.

8 MS. ORLER: So it appears that the document
9 that Staff counsel has is the correct document. However,
10 it appears that the copy that I am reading from when I
11 printed those off from my Word document may not have been
12 the most recent one, and I do apologize for that.

13 JUDGE STEARLEY: Which document do you
14 have, Ms. Heintz?

15 MS. HEINTZ: I have the document where
16 page 23, line 12 reads CO Schedule 3, and the time stamp
17 in the upper right-hand corner of the document is 2/22/07
18 at 8:16 p.m.

19 JUDGE STEARLEY: Would you please approach
20 and show me what you have?

21 MS. HEINTZ: Yes.

22 JUDGE STEARLEY: I do not have a
23 Schedule 4. Is there --

24 MS. ORLER: No. There is only -- there are
25 only three schedules.

1 JUDGE STEARLEY: So as a correction to your
2 prefiled testimony, we will note there is no Schedule 4?

3 MS. ORLER: That is correct, and I
4 apologize.

5 BY JUDGE STEARLEY:

6 Q. Are there any other changes that need to be
7 made with regard to your testimony?

8 A. We may find them. I'm certainly not aware
9 of them at this time.

10 Q. With those changes that you've just
11 identified, if I were to ask you the same questions today
12 as you have outlined in your prefiled testimony, would
13 your answers be substantially the same?

14 A. Yes, sir, they would be.

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

17 A. Absolutely, yes.

18 Q. And with that, Ms. Orler, would you like to
19 offer into evidence Exhibits 1, 2 and 3?

20 A. Yes, sir.

21 JUDGE STEARLEY: All right. At this time
22 we will take or hear objections to the offering of
23 Ms. Orler's testimony.

24 MR. COMLEY: Your Honor, the record will
25 reflect that on or about -- I've forgotten the date. It's

1 been a while. But the Respondents and the Applicants had
2 filed objections to Ms. Orler's testimony. Those
3 objections were filed on the 24th of February, and I would
4 like leave of the Commission not to go through them line
5 by line. I'm trusting that the manner in which the
6 objections were raised in the written document would
7 suffice to preserve my objections to her testimony.

8 That would include objections to
9 Exhibits 1, 2 and 3. Exhibit 1 would be Ms. Orler's
10 direct testimony. I think I used the amended version for
11 purposes of the page and line numbering. Also, to Cathy
12 Orler's rebuttal testimony, which was marked as Exhibit 2,
13 and her surrebuttal testimony, Exhibit 3. I would move
14 that those portions of her testimony be stricken.

15 JUDGE STEARLEY: Which specific portions
16 again, Mr. Comley?

17 MR. COMLEY: I've identified each one by
18 page number and line number.

19 JUDGE STEARLEY: Yes.

20 MR. COMLEY: So it would be in the prefiled
21 objections, and if you want me to go through each of them,
22 I will do so, but I'm hoping that because of the prefiling
23 of the objections, I will have preserved those objections
24 rather than reading them all into the record.

25 MS. ORLER: Can I ask that they be entered

1 as proof into the proceedings?

2 JUDGE STEARLEY: My question, Mr. Comley,
3 would be, we can enter the evidence, preserving your
4 objections, but that would be doing so without rulings on
5 individual objections.

6 MR. COMLEY: Very well.

7 JUDGE STEARLEY: So if you would like, we
8 can go ahead and go through and give rulings on these.
9 That would be my only concern is we'll end up at the end
10 of the hearing with all of these outstanding objections.

11 MR. COMLEY: Very well. And I think I'm
12 referring to her amended testimony. It would be her
13 direct testimony, Exhibit 1. It would be page 1, line 1
14 through 20, through page -- excuse me. It would be
15 page 1, line 11 through 20, lines 11 through 20, page 2,
16 lines 1 through 12.

17 MS. ORLER: Excuse me, your Honor. Not
18 being familiar with the proceedings, at what point am I
19 permitted to a response to --

20 JUDGE STEARLEY: Mr. Comley's going to
21 state his objections. I'll allow a response. Then I'll
22 rule.

23 MR. COMLEY: The material in those lines is
24 entirely argument, and it is clearly not based in fact.
25 Because of its argumentative nature, I object to it and

1 would propose that it be stricken.

2 JUDGE STEARLEY: Ms. Orlor, your response?

3 MS. ORLER: As indicated in my testimony,
4 these are my personal interests. Big Island is my home.
5 I have a residence there, and I have a property there with
6 property values. As indicated in my testimony, these are
7 my personal interests, not only in this case, but the
8 issues, and a part of my testimony.

9 JUDGE STEARLEY: To the extent that these
10 are your personal opinions that may raise issues of facts
11 that are not in evidence, I will allow the testimony for
12 that purpose, that these are stating your personal
13 opinions. I will sustain any objection to any facts that
14 are not in evidence at this time.

15 MS. ORLER: That's fine.

16 JUDGE STEARLEY: Is that acceptable,
17 Mr. Comley?

18 MR. COMLEY: I'll keep my objection. Thank
19 you.

20 Page 3, lines 19 through 21, continuing to
21 page 4, lines 1 and 2. The objection refers to numerous
22 requests to Folsom Ridge, et cetera, for copies of
23 ratification documents. The objection is that this
24 misstates the record. There was -- this is material that
25 pertains to discovery requests. There have been no

1 discovery motion had been filed at the time of the
2 motion -- at the time of the objection, and it presumes
3 the requests were lawful in the first place. And on that
4 ground, we'd move that this be stricken from her
5 testimony.

6 JUDGE STEARLEY: Ms. Orler?

7 MS. ORLER: I think that you will recall a
8 conference call that I had with yourself as well as
9 Mr. Comley regarding these documents that I had requested,
10 and Mr. Comley was kind enough in that conference call to
11 send the copies that I was requesting at the time, or to
12 indicate that they were just simply not available.

13 JUDGE STEARLEY: As I recall from the
14 record, we did not have direct Data Requests with regard
15 to these. We had an exchange of letters, and the
16 Commission did make an order for a response to that letter
17 in lieu of Data Requests. There has been a discovery
18 conference on these, and it was my understanding that the
19 parties may have entered into a stipulation as to the
20 information that was requested, or is this different
21 information, Mr. Comley?

22 MR. COMLEY: This would be the information.
23 I think Ms. Orler, and I am -- I think that we have
24 reached an agreement about how that information can be
25 used. And as far as -- as far as I know, the parties have

1 come to terms on that and an agreeable solution was
2 reached.

3 MS. ORLER: That is correct.

4 JUDGE STEARLEY: Well, I will sustain the
5 objection, but I am not going to strike it from the record
6 pursuant to Statute 536.070 sub 7 and 4 CSR 240.2130 sub
7 3, the Commission will preserve these items in the record
8 and not strike them. Further rulings from the Bench
9 regarding not striking will be for those same grounds. I
10 will not go through a repetition of the rules and statutes
11 on that.

12 MR. COMLEY: Very well. Objection to
13 page -- to the question on page 4, starting at line 3.
14 The question is argumentative and assumes facts not in
15 evidence.

16 JUDGE STEARLEY: Ms. Orler?

17 MS. ORLER: This was the relief that I
18 requested in my formal complaint. My relief request
19 remains current today. It has already been established
20 through the opening statements that the Commission lacks
21 jurisdiction over homeowners associations.

22 JUDGE STEARLEY: Let me clarify that
23 opening statements do not constitute evidence, Ms. Orler.
24 So those facts have not yet been established in evidence
25 at this time. You can proceed.

1 MS. ORLER: I have documents that we have
2 numbered and entered into evidence to indicate that I have
3 not signed a ratification document. And the information
4 that was supplied to me by Mr. Comley with regards to
5 members, non-members and customers being served are part
6 of the question and answer for lines 20 through 22 on
7 page 4.

8 JUDGE STEARLEY: Mr. Comley?

9 MR. COMLEY: Again, my objection is to the
10 form of the question. It's clearly an argumentative
11 question, and it should not be allowed to be answered.

12 MS. ORLER: Can I rephrase the question?

13 MR. COMLEY: It's too late to do that,
14 Judge.

15 MR. MILLS: Judge, this is not
16 cross-examination. This is direct testimony. I don't see
17 how a witness can pose an argumentative question to
18 herself. I think the objection is silly, frankly. I
19 don't --

20 MR. COMLEY: I think using words like
21 obviously, which would be value judgments about the nature
22 of the evidence, that would be an argument. With the
23 significant number stated above, which I think is an
24 argument about the nature of the number that was stated
25 above. There have been other Big Island residents who

1 were concerned. All these things are value judgments and
2 argument. It is a replacement for a brief.

3 MS. ORLER: I have the documentation that
4 we've just entered into evidence to show other residents'
5 concerns.

6 JUDGE STEARLEY: That documentation has not
7 yet been offered or entered into evidence at this time.
8 It's only been marked, which will be later offered.

9 MS. ORLER: Okay.

10 JUDGE STEARLEY: Okay. With regard to the
11 form of the question, I will sustain the objection. I am
12 not going to strike any testimony, however.

13 With regard to the reference to other Big
14 Island residents, I don't believe -- I believe those are
15 facts not in evidence, and I will sustain that objection.
16 Moving on.

17 MR. COMLEY: Page 4, lines 13 through 19.
18 Let's focus on lines 13 through 15. I object to that
19 question and answer on grounds of hearsay.

20 JUDGE STEARLEY: Ms. Orler, a hearsay
21 statement is an out-of-court statement that's being
22 offered for the purpose of proving the facts of that
23 statement.

24 MS. ORLER: I can prove the facts of my
25 statement.

1 support that.

2 MR. MILLS: And, your Honor, that is not
3 hearsay. That's a fact of which this witness has personal
4 knowledge. It's not someone told her that residents
5 hired.

6 MS. ORLER: I was one of the residents.

7 MR. MILLS: She was one of the residents.

8 JUDGE STEARLEY: Right. I will overrule
9 that objection. Moving on.

10 MR. COMLEY: Page 4, lines 16 through 19,
11 and page 5, lines 1 through 14. This is a rendering of
12 legal opinions that are legal conclusions that there is no
13 foundation for those legal opinions. Neither are they
14 attributable to any particular lawyer, neither are they
15 attributable to anyone who is available for
16 cross-examination. It is hearsay. It is legal
17 conclusion. It is not fact. It is invading the province
18 of the Commission. It is irrelevant.

19 MS. ORLER: Are you referring to the
20 question, how do you know that Mr. Golden was advised by
21 Mr. McElyea to avoid running afoul of the PSC to
22 consider --

23 JUDGE STEARLEY: This is, what were the
24 legal opinions rendered as determination regarding these
25 issues?

1 MS. ORLER: That is stated in the documents
2 that I have.

3 MR. COMLEY: Stated or not, it's still a
4 legal opinion.

5 JUDGE STEARLEY: Yes. I will overrule the
6 objections as far as being irrelevant, but I will sustain
7 the objection as far as being hearsay, lack of foundation,
8 legal conclusions. It will not be stricken from the
9 record, however.

10 MS. ORLER: May I ask a question? Is
11 Mr. Comley not exerting his legal opinion with the
12 objection?

13 MR. COMLEY: I am an attorney, and I can do
14 that.

15 MS. ORLER: But these were attorneys also.

16 MR. COMLEY: And they're not here.

17 MS. ORLER: But we have their signature on
18 documents.

19 JUDGE STEARLEY: That document when it's
20 offered into evidence, if proper foundation is laid and
21 it's authenticated, will come into evidence and the
22 document will speak to that issue itself.

23 MS. ORLER: Okay. Thank you.

24 MR. COMLEY: The next objection is page 5,
25 lines 15 through 17, and the objection on that question is

1 speculation.

2 MS. ORLER: Which question is that?

3 MR. COMLEY: The question is, why did
4 Mr. Golden and Mr. Rusaw choose not to become certified as
5 a licensed public utility at the time these legal opinions
6 were rendered?

7 MS. ORLER: I again have the document from
8 Mr. McElyea written to Mr. Golden that those individuals
9 should be considered members, but as you've indicated,
10 that's not been entered into evidence yet.

11 JUDGE STEARLEY: Yes. And the answer to
12 this question is speculation on your part as to why these
13 other individuals have not done something. I will sustain
14 the objection. I will not strike.

15 MR. COMLEY: Page 6, the entire page, it
16 contains a variety of legal conclusions, arguments, and
17 conclusionary statements.

18 MS. ORLER: Which question is that,
19 Mr. Comley?

20 MR. COMLEY: The question starts with, how
21 do you know that Mr. Golden was advised? Then the answer
22 to that question, then the next question is, were you ever
23 coerced or intimidated by Folsom Ridge?

24 MS. ORLER: But I was.

25 MR. COMLEY: And all this is conclusionary

1 and -- again, it is conclusionary. It is argumentative.
2 It does not set out statements of fact.

3 MR. MILLS: These are statements of fact
4 that describe Ms. Orler's personal experience.

5 JUDGE STEARLEY: I believe that this
6 evidence can come in as Ms. Orler's opinion from her
7 direct knowledge and experience. So I will overrule the
8 objection.

9 MR. COMLEY: Page 7, lines 3 through 9.
10 Again --

11 MS. ORLER: Mr. Comley, could you please
12 repeat the question when you reference page numbers?

13 MR. COMLEY: This would be, has Mr. Golden
14 or Mr. Rusaw shown any willingness to cooperate with you,
15 et cetera? Again, that is an argumentative question. It
16 places judgment on willingness and cooperation.

17 MS. ORLER: They are still billing me and
18 they are not regulated.

19 MR. MILLS: Your Honor, I don't believe
20 it's argumentative. Whether or not it's relevant depends
21 on how you look at the issues in this case. But certainly
22 a big part of the issues in this case have to do with the
23 personal experience of the Complainants in dealing with
24 Folsom Ridge and Folsom Ridge's principals, and this
25 directly talks about Ms. Orler's experience in dealing

1 with principals of Folsom Ridge.

2 MR. COMLEY: This goes beyond shorthand
3 rendition. This goes into argument. This goes into
4 almost hostility. This is -- this is not a proper way of
5 using direct testimony. It would not be a proper question
6 on direct examination to any witness.

7 MS. ORLER: But you requested the prefiled
8 testimony.

9 JUDGE STEARLEY: That doesn't address the
10 objection, Ms. Orler. I will allow this as your personal
11 opinion of your experiences. To the extent that the
12 question is argumentative, I will sustain that. I will
13 not strike.

14 MR. MILLS: I'm sorry. So is this
15 portion -- I didn't understand if you sustained the
16 objection or overruled it.

17 JUDGE STEARLEY: Was our only objection
18 argumentative in this one, Mr. Comley, or did I hear more
19 than one?

20 MR. COMLEY: My list is only argumentative.
21 At the same time --

22 JUDGE STEARLEY: I'm following your list of
23 many objections, so I want to be sure I'm clear.

24 MR. COMLEY: There is also reference to
25 compelling the production of membership documents and

1 billing information, and that does come down to the next
2 question as well. I think it very much is similar to what
3 we've talked about before.

4 JUDGE STEARLEY: Well, I will go ahead and
5 overrule and allow that as a statement of Ms. Orler's
6 opinion and impressions with her personal experience.

7 MR. COMLEY: The next objection is to
8 page 7 itself, lines 10 through 19, what documentation has
9 been requested, and then there is an enumeration of that
10 through there. And it goes over on to page 8, lines 6
11 through 15. Excuse me. It goes over to page 8 as well,
12 and I think I neglected to include that on the objection,
13 but the objection would be to that question and the entire
14 answer that followed.

15 Again, we are dealing with information that
16 pertains to a discovery request. At the time of the
17 objection, no discovery motion had been filed. It also
18 presumed lawful requests were made for the documents. I
19 would request a similar ruling like we did with respect to
20 page 3, lines 19 through 21 and page 4, lines 1 through 2.

21 JUDGE STEARLEY: Ms. Orler?

22 MS. ORLER: This was a part of the
23 telephone conference that we had concerning these
24 documents that had been requested, and this testimony was
25 given prior to that conference call, and Mr. Comley did

1 try his best to supply some documentation.

2 JUDGE STEARLEY: Okay. Do you agree with
3 that, Mr. Comley? Are these the same issues?

4 MR. COMLEY: Yes, it is the same issue.
5 And I'm hoping I did more than just my best and satisfied
6 the situation.

7 JUDGE STEARLEY: My ruling will be the same
8 as it was previously. To the extent Ms. Orler did request
9 the documents, not that there was a -- well, we did have a
10 belated motion or an out of time or out of order motion to
11 compel on that. To the -- I'm trying to think back to
12 what my actual ruling was just a moment ago on that prior
13 one.

14 But I think we'll allow this testimony to
15 stand. We'll note that the objections that Ms. Orler has
16 raised here have been resolved by the stipulation of the
17 parties at that discovery conference that came as a result
18 of that discovery conference.

19 MS. ORLER: That is correct.

20 MR. COMLEY: Page 8, lines 6 through 10 --
21 excuse me -- lines 6 through 15. Again --

22 MS. ORLER: Can you repeat the question
23 when you state the lines and page numbers, please,
24 Mr. Comley?

25 MR. COMLEY: The questions involved, were

1 all efforts in attempted negotiations with Mr. Golden and
2 Mr. Rusaw towards resolve exhausted? That's one of the
3 natures of the question. Another question, what was the
4 final determining factor that prompted your filing of your
5 formal complaint? And finally, are you continuing to be
6 billed by the HOA as a non-member for no service received
7 and not being connected to the utility?

8 My objection is that these are
9 argumentative questions, they are conclusionary, and they
10 are self-serving.

11 MS. ORLER: I have documentation to support
12 each and every one of the statements.

13 MR. MILLS: And if I may respond, your
14 Honor, I continue to have a problem with the fact that
15 Mr. Comley is characterizing questions that the witness
16 poses to herself as argumentative. Perhaps they're not as
17 artfully posed as a professional lawyer would write them,
18 but this is a pro se complainant who is trying to tell her
19 side of the story, and I think these questions as well as
20 the answers do that.

21 These particular questions tell about
22 things that she has personal experience of and from her
23 point much view are relevant to the issues in this case.
24 Whether the questions could have been written better, I
25 don't think argumentative in terms of direct testimony is

1 a valid objection at all.

2 MR. COMLEY: Your Honor, I agree that
3 pro se litigants may have difficulty with the
4 understanding of the rules of evidence and the direct
5 testimony rules in this Commission. At the same time,
6 simply because they have not been represented by counsel
7 does not excuse them from fulfilling every rule.

8 The rules of our Commission and the rules
9 of evidence in this Commission I think are fairly clear,
10 and argumentative questions to a witness would not be
11 permitted by counsel.

12 MR. MILLS: Argumentative questions on
13 cross-examination would not be permitted. Argumentative
14 questions on direct examination, it's a nonsequitur.

15 JUDGE STEARLEY: I will overrule the
16 objection. This can come in as Ms. Orler's statement of
17 her personal impressions, opinions with regard to the
18 question that was posed.

19 MS. ORLER: May I make a comment?

20 JUDGE STEARLEY: I don't believe you need
21 to at this time. When you do make your next response,
22 Ms. Orler, could you please bend that microphone a little
23 bit closer to you so we can pick you up better on our
24 recording?

25 MS. ORLER: I apologize.

1 not know how to distinguish what's in a brief, what should
2 be posed in a brief, as opposed to what should be posed in
3 direct testimony. These are the issues on which I filed
4 my formal complaint.

5 JUDGE STEARLEY: And those are the issues,
6 as much as the Commission has jurisdiction to decide, will
7 decide based upon the evidence. So your statements
8 answering yes or no would be legal conclusions. I will
9 sustain the objection, but I will not strike.

10 MR. COMLEY: Page 10, lines 2 through 18,
11 through page 11, lines 1 through 16, page 12, lines 1
12 through 9.

13 MS. ORLER: Can you state the questions,
14 please, Mr. Comley?

15 MR. COMLEY: What qualifications and/or
16 previous professional experiences do either Mr. Golden or
17 Mr. Rusaw have in owning, operating and managing a water
18 and sewer utility? That's the question. This is lay
19 opinion. There is no expert opinion of a manager or
20 otherwise. There is no foundation for the opinion. There
21 is considerable legal conclusion within the body of the
22 answer. There is also argumentation throughout.

23 MS. ORLER: I prefaced my answer to what
24 qualifications that Mr. Golden and Mr. Rusaw had based on
25 their biographies that they have provided.

1 JUDGE STEARLEY: I'm going to allow this as
2 lay opinion that is evidence. Mr. Comley, you would
3 certainly have the opportunity to rebut as you present
4 your witnesses throughout the case.

5 MR. COMLEY: Page 14, lines 1 through 9.
6 Excuse me. Page 14, lines 4 through 14. Why do you feel
7 that a receiver is necessary to operate, manage and
8 administer the water and sewer utility if the utility is
9 regulated by the Missouri Public Service Commission?

10 This is argumentation. In response, it's
11 legal conclusions, opinion without qualification or
12 foundation.

13 JUDGE STEARLEY: Ms. Orler?

14 MS. ORLER: We don't know the scope of
15 jurisdiction that the PSC has with our situation and our
16 case before it. I have in later questions indicated, for
17 example, have you and other Complainants in this case been
18 advised by the Office of Public Counsel and the Staff of
19 the PSC not to make the request to the Commission to
20 appoint a receiver?

21 So I'm trying to honestly present for the
22 Commission the chain of events leading to the hearing
23 today. I'm just trying to honestly put forth all of the
24 information. We did make the request in pleadings. We
25 were advised by Public Counsel as well as staff members

1 not to make the request for a receiver in this situation
2 because our request for receiver to strictly operate,
3 manage and maintain the facility has never been done
4 before.

5 JUDGE STEARLEY: To the extent that this is
6 just a question asking how Ms. Orler feels, which is again
7 asking for her lay opinion and impressions, I will
8 overrule the objection and allow it into the record.

9 MR. COMLEY: Page 15, lines 15 through 22,
10 the answer is given, the utility's substandard
11 construction, operation, management, administration.
12 Again, the answer is argumentative and contains legal
13 conclusions. There is no foundation. Additionally, there
14 is no foundation for the opinion that the -- the utility
15 has substandard construction.

16 JUDGE STEARLEY: To the extent that lines
17 15 through 21 just represent Ms. Orler's opinions and
18 feelings, I will allow that. Those remarks can obviously
19 be rebutted by your witnesses, Mr. Comley.

20 To the extent line 22, transfer the utility
21 assets to the 393 companies is a transfer of the utility's
22 liabilities, I believe that is a legal conclusion. I'll
23 sustain the objection to that.

24 MR. COMLEY: I had the same objection to
25 lines 1 through 7 of page 16, and I neglected to mention

1 that.

2 JUDGE STEARLEY: With regard to the legal
3 conclusions?

4 MR. COMLEY: Yes.

5 JUDGE STEARLEY: And that I will sustain,
6 but I will not strike.

7 MR. COMLEY: Page 16, lines 12 through 16,
8 without regulation, do you feel the 393 not-for-profit
9 companies have the capabilities to address, correct and
10 resolve the utility issues spanning nearly eight years?
11 This is speculation and opinion without any foundation.

12 JUDGE STEARLEY: Ms. Orlor?

13 MS. ORLER: If I may, the reason that we
14 are here today is because the utility as is. The
15 complaints were filed because of a utility's the way it
16 is. This is my response stating that. The system is what
17 it is. That's why we are here today. Issues need to be
18 resolved. You just can't transfer it as is.

19 MR. COMLEY: I think she's proving my
20 point, that this is an argumentative question, and also
21 it's one that is not based on any reasonable foundation
22 for the witness to give.

23 MR. MILLS: Perhaps the ultimate question
24 in this proceeding is whether or not this transfer should
25 take place, and if the Complainant and the party is not

1 allowed to give their opinion on that question, obviously
2 it's not an expert opinion because Ms. Orlor is not an
3 expert, but her opinion as a prospective customer of
4 either of these systems I think is one of the reasons why
5 we're here today.

6 JUDGE STEARLEY: I agree, yes. Because the
7 question is written as do you feel is lay opinion, I will
8 overrule the objection and it will come into evidence.

9 MR. COMLEY: Page 17, lines 14 through 21.
10 Do you feel that the 393 companies' appointed board of
11 directors is a fair and impartial representation of and
12 for Big Island residents and its utility customers?

13 Again, I put in this objection that
14 feelings are not evidence, and second, that this is an
15 argumentative question and the answer is as well.

16 MR. MILLS: And, your Honor, if the word
17 feel was replace with the word believe, this would look
18 exactly like a question you would see in virtually every
19 piece of testimony filed before this Commission.

20 I think -- I think what Mr. Comley is
21 trying to say is that this is not -- this testimony is not
22 as well written as it should be, and the use of the word
23 feel is perhaps inartful. But what Ms. Orlor is talking
24 is her belief, not about emotional feelings, and I think
25 her beliefs on this issue are relevant.

1 JUDGE STEARLEY: I agree, and for the same
2 reasons as I overruled the last objection regarding the
3 question using the word feeling, the objection will be
4 overruled.

5 MR. COMLEY: Page 18, lines 13 through 20,
6 over to page 19, lines 1 through 5. The question is,
7 since Case No. WO-2007-0277 involving the transfer of
8 assets to the unregulated 393 companies as part of this
9 procedural schedule, et cetera, why are you still making
10 reference to a regulated utility on Big Island?

11 Again, I think that these questions and the
12 answer are argumentative, and I object to the form that's
13 being used in her questioning.

14 MS. ORLER: It's my understanding that that
15 is part of the case here. We are -- with the complaint
16 cases, our request for relief was for a regulated utility.
17 That's why I'm making reference to a regulated utility.

18 JUDGE STEARLEY: For the same reasons I've
19 overruled the other objection as far as argumentative
20 questions, I will overrule this one.

21 MR. COMLEY: Page 19, lines 6 through 21,
22 through page 20, lines 3 through 23, page 21, line 1.
23 These are questions and answers discussing platting the
24 center of the island to establish a baseline density, also
25 an extension to the original Phase 1 water and sewer

1 utility. We think that this is irrelevant. This is not
2 pertinent to the issues.

3 MS. ORLER: It is, your Honor, and I do
4 have documentation to support that very fact.

5 MR. COMLEY: I cannot tell what issue it's
6 relevant to.

7 MS. ORLER: Didn't you show a slide show
8 presentation for approximately 15 minutes regarding the
9 future development of Big Island? That future development
10 utilizes --

11 JUDGE STEARLEY: Excuse me for
12 interrupting, Ms. Orler, but the issues list was adopted
13 and sent out yesterday, and those are the issues to which
14 we evaluate whether evidence is relevant or not. So
15 Mr. Comley's opening statements this morning do not
16 pertain to the issues the Commission must decide when he
17 was outlining, you know, items for future development.

18 So how do you believe these questions and
19 answers are relative to the issue of whether or not the
20 water and sewer company is -- needs to be a regulated
21 utility?

22 MS. ORLER: Because with future expansion
23 on the island, there are additional connections planned to
24 the utility that exist. The question that I've asked, why
25 did Folsom Ridge plat the center of the island to

1 establish a baseline density for future development, I
2 have the documentation in Folsom Ridge's own words as to
3 why that was done. And the extension to the original
4 Phase 1 sewer utility, that construction, these are all
5 relevant issues. We're all -- we are here talking about
6 the utility and its ability to service the residents of
7 Big Island.

8 JUDGE STEARLEY: The references to future
9 development I find to be irrelevant, and I will sustain
10 the objection. I will not strike.

11 MR. COMLEY: Page 21, lines 13 through 21.
12 The question, how did Folsom Ridge impose the covenants
13 and restrictions of the Big Island HOA at the time of
14 sale, et cetera?

15 The objection to the answer is that the
16 answer contains argument, it contains legal conclusion,
17 hearsay and lay opinion for which there is no foundation.

18 MS. ORLER: There is. I do have the
19 documentation to support that. The Big Island HOA was not
20 established until two years after the purchase of taps,
21 and so, therefore, properties that were purchased from
22 Folsom Ridge prior to the HOA being in existence, my
23 question is valid. How did they -- how did they impose
24 the amended covenants on those properties that were
25 purchased from Folsom Ridge if there were no HOA in

1 existence?

2 MR. COMLEY: Again, the objection is to the
3 answer and the nature of the comments in the answer. It's
4 argumentative. It's filled with legal conclusions.

5 JUDGE STEARLEY: To the extent that this
6 question and answer is expressing the lay opinions of
7 Ms. Orler, I will allow it, and I will overrule the
8 objection.

9 MR. COMLEY: Page 22, lines 9 through 14.
10 What was the objective of Mr. Golden and Mr. Rusaw in
11 platting and replatting portions of land in 2004?

12 This is entirely speculative. It's based
13 on hearsay. There is no authentication or foundation for
14 the answer or the question.

15 MS. ORLER: There is. I do have an e-mail
16 from Mr. Golden, and this is a quote taken from that
17 e-mail by Mr. Golden. We had no choice but to protect our
18 property rights based on what happened in last week's
19 meeting. While we do not believe this necessarily serves
20 us or you in best interests, it's truly unfortunate that
21 we were forced to plat the island in this manner. I have
22 a copy of that document.

23 MR. COMLEY: The e-mail is not in evidence.
24 It's not referred to in the question and answer. There is
25 no way in the world we could determine what foundation was

1 laid for that, and it's too late to put that e-mail and
2 have her read it into evidence right now.

3 JUDGE STEARLEY: It is hearsay. I will
4 sustain that objection. I will not strike, though. It
5 comes in as hearsay, which will go to its weight and
6 credibility.

7 MS. ORLER: Excuse me, your Honor.

8 JUDGE STEARLEY: Yes, Ms. Orler?

9 MS. ORLER: Can you explain to me
10 credibility for the e-mail when it is signed by
11 Mr. Golden?

12 JUDGE STEARLEY: At this point, we do not
13 have an authenticated e-mail entered into evidence.

14 MS. ORLER: I have that. Do we do that
15 now?

16 JUDGE STEARLEY: If you want to offer that
17 right now, we could offer it right now, and we can go
18 ahead and rule on that piece of evidence.

19 MR. COMLEY: Which e-mail is it? Has it
20 been marked?

21 JUDGE STEARLEY: Was this one we did mark?

22 MS. ORLER: I'm hoping so. If not, I do
23 have my reserve with me. I think that's in my reserve.
24 May I get that?

25 JUDGE STEARLEY: Please do.

1 MS. ORLER: I don't have ten copies.

2 JUDGE STEARLEY: That's fine. If you'll
3 bring one copy forward to me. One copy to our court
4 reporter to mark, and do you have a copy for Mr. Comley
5 and other counsel?

6 MS. ORLER: I only have two copies, and I
7 need to retain one for myself.

8 JUDGE STEARLEY: What I'm going to ask you
9 to do is have the court reporter mark one. I would like
10 you to pass that document to Mr. Comley so that he can
11 take a look at it as well as to Staff and OPC. It will be
12 marked as Exhibit 75.

13 (EXHIBIT NO. 75 WAS MARKED FOR
14 IDENTIFICATION BY THE REPORTER.)

15 MS. ORLER: This is an e-mail sent to Phil
16 Hiley from R.V. (Reggie) Golden, Folsom Ridge, LLC
17 manager, and the date is May the 28th of 2004.

18 JUDGE STEARLEY: May I see the document?
19 If you'll please take the stand.

20 Ms. Orler wishes to offer Exhibit No. 75
21 into evidence. Do I hear any objections?

22 MR. COMLEY: Your Honor, I object to that.
23 The copy that I have of this e-mail, first, it has not
24 been authenticated by Mr. Golden. There is no indication
25 that this was sent to Ms. Orler. The document is

1 redacted. It is highlighted. There are apparently
2 Post-It notes with a variety of markings on it. It is
3 unclear whether this is the original, whether it can be
4 authenticated as an original.

5 MS. ORLER: I have the original.

6 MR. COMLEY: And you have markings on the
7 document. Again, we object on grounds that this cannot be
8 proper authenticated. Mr. Golden has not authenticated
9 this document. This is the first time we've seen this
10 document. There's no way in the world we can determine if
11 this is authentically the e-mail that was sent by
12 Mr. Golden.

13 JUDGE STEARLEY: Ms. Orler, can you give us
14 some foundational evidence to authenticate this document?

15 MS. ORLER: Yes, sir, I can. As Mr. Comley
16 referred to earlier in his slide presentation, planning
17 and zoning did not come into effect on Big Island until
18 the year 2004. We as a group of residents at that pint in
19 time were opposing Folsom Ridge because they wanted to
20 rezone Big Island from single family to multi-family. We
21 took an opposition to the multi-family proposal of Folsom
22 Ridge.

23 As a part of that opposition to Folsom
24 Ridge and planning and zoning, we the residents want to
25 retain our single family zoning on Big Island. This was

1 Mr. Golden's response to our, the residents, winning our
2 opposition to maintain our single family zoning, and as a
3 result of that, they replatted the island.

4 JUDGE STEARLEY: Okay. And how did you
5 come into possession of this document?

6 MS. ORLER: As per Mr. Golden's
7 instructions at the top of the document, Dear Phil, I
8 would appreciate you passing on this information to your
9 group and sending me confirmation. It was passed along to
10 me. I was part of that group.

11 JUDGE STEARLEY: And Mr. Golden is not here
12 to authenticate whether or not that is the e-mail he has
13 written; is that correct?

14 MR. COMLEY: That's correct. He has not
15 authenticated this document.

16 JUDGE STEARLEY: Is there an affidavit
17 attached to the document signed, notarized by Mr. Golden
18 that authenticates that document?

19 MS. ORLER: No, but it says it's from
20 Reggie Golden and has his e-mail address, which has been
21 confirmed via the database of Tonie Hiley that she sent to
22 the Commission, and the Commission has used this e-mail
23 database in its correspondences.

24 MR. MILLS: And, your Honor, Mr. Hiley will
25 be a witness later in the proceeding, and perhaps

1 Ms. Orler can ask Mr. Hiley whether he did receive this
2 particular e-mail, and Mr. Hiley can authenticate it.

3 JUDGE STEARLEY: Okay. I will reserve
4 ruling on the document until that time. If Mr. Hiley
5 cannot authenticate it, though, it will be considered
6 hearsay and I will sustain that objection.

7 Next objection, Mr. Comley?

8 MR. COMLEY: Still on page 22, lines 15
9 through 18. The question is, have Mr. Golden and
10 Mr. Rusaw purchased other properties associated with Big
11 Island that have not been purchased in the name of Folsom
12 Ridge? And the question and answer are irrelevant. It is
13 also hearsay, and there is no authentication.

14 MS. ORLER: I did my research as per my
15 answer. It says, I believe so according to the Secretary
16 of State's website. This information I obtained from that
17 website in that the interior of Big Island is recorded
18 under Secretary of State as per a legal entity, and it's
19 for real estate property sales. I believe the name is Big
20 Island Interior.

21 JUDGE STEARLEY: Okay. I'm not sure that I
22 understand where the purchase of additional property has
23 any relevance to our issues regarding sewer and water.

24 MS. ORLER: The water and sewer are located
25 on the center or interior of the island.

1 JUDGE STEARLEY: Mr. Comley?

2 MR. COMLEY: Again, there's nothing leading
3 us to the Secretary of State to find out if this
4 information's accurate. This is a review that she's done.
5 She's counting on a source that's not before this
6 Commission, and there's no way to authenticate what's been
7 said in that answer.

8 MR. MILLS: Your Honor, Mr. Rusaw will be a
9 witness in this case, and we can certainly ask him whether
10 it's true or not. Whether it's relevant, I don't have an
11 opinion on that, but, you know, unless Mr. Comley plans to
12 have Mr. Rusaw take the stand and say that this is not
13 true, then I don't understand the point of the objection.

14 MS. ORLER: And I have my copy --

15 MR. MILLS: Mr. Rusaw will be here and he
16 can tell us whether it's true or not.

17 MS. ORLER: And I do have my copy from the
18 Secretary of State.

19 JUDGE STEARLEY: I will overrule the
20 objection to the extent it's Ms. Orler's belief.
21 Obviously any evidence in terms that is relevant to rebut
22 that or goes to further relevance of that can be presented
23 by the remainder of the witnesses.

24 MR. COMLEY: Page 23, lines 1 through 14.
25 The question is, did Mr. Golden and Mr. Rusaw represent to

1 potential Big Island property owners that the development
2 was a planned single family community development?
3 Irrelevant.

4 JUDGE STEARLEY: I find it's both
5 irrelevant and hearsay. I'll sustain the objection. I
6 will not strike.

7 MR. COMLEY: Page 25, lines 13 through 20,
8 how does Folsom Ridge explain an eight-year documented
9 history to present of improperly constructing the water
10 and sewer utility system, combined with its improper
11 management, misoperation, et cetera?

12 The question is argumentative. It's filled
13 with legal conclusions. And the answer is filled with
14 opinion that's not given any foundation at all.

15 MS. ORLER: I think it's extremely
16 pertinent. That's why we're here. We have had an eight-
17 year documented history to the present of sewer, water and
18 sewer utility problems. That's why we're here.
19 Mr. Rusaw and Mr. Golden have been the primary individuals
20 responsible for the water and sewer utility as well as its
21 problems. That's why we're here.

22 JUDGE STEARLEY: Those facts are not in
23 evidence at this time. However, I will overrule the
24 objection and allow it as being the lay opinion of
25 Ms. Orler. The facts as they come in with your witnesses

1 may very well rebut that.

2 MR. COMLEY: Page 25, lines 21 through 22,
3 continuing over to page 26, line 1 through 11. The
4 question pertains to other real estate developments that
5 Mr. Golden and Mr. Rusaw have been involved in. This is
6 irrelevant. The answer also contains hearsay and
7 argument.

8 MS. ORLER: My answer contains a direct
9 quote that was taken from the court docket where residents
10 of Colorado have some of the similar concerns that we as
11 Big Island residents have over the LifeBridge development
12 in Colorado that Mr. Rusaw and Mr. Golden are a part of.

13 MR. COMLEY: The document is a hearsay
14 source.

15 MS. ORLER: I have the document.

16 JUDGE STEARLEY: Regardless if the
17 document's present, I find it irrelevant. I will sustain
18 the objection.

19 MR. COMLEY: Page 26, lines 12 through 19.
20 It's argumentative. It is opinion. It is entirely
21 speculation.

22 MS. ORLER: And what questions are those,
23 Mr. Comley?

24 MR. COMLEY: Did Mr. Golden and Mr. Rusaw
25 revise their PUD plans to respond to the concerns of the

1 Big Island residents?

2 MS. ORLER: I have the document to
3 substantiate that.

4 MR. COMLEY: Again, the objection is on
5 grounds of argumentation and opinion and speculation.

6 JUDGE STEARLEY: And which pages does this
7 take us through, Mr. Comley?

8 MR. COMLEY: I think I was confining it to
9 page 26, lines 12 through 19.

10 MS. ORLER: My purpose in asking this
11 question, your Honor, goes to the credibility of Mr. Rusaw
12 and Mr. Golden with regards to commitments made to
13 residents and a prior history that has taken place here
14 surrounding a new homeowners association with regards to
15 everyone being a member, even those such as myself that
16 are in question today, and what intent that new homeowners
17 association had with purchasing property, which was the
18 center of the interior of the island, and all of those
19 persons who were required to be a member in this
20 organization, the organization then in turn would purchase
21 the property, and if you could not afford your
22 proportionate share, a lien would be attached to your
23 home. And I have that document.

24 JUDGE STEARLEY: Ms. Orler, I'm going to
25 allow this testimony. I'm going to overrule the objection

1 as being your personal lay opinion. Next objection.

2 MS. ORLER: Do you want the document?

3 JUDGE STEARLEY: If you're going to offer
4 those into evidence and they've already been marked, we
5 will address them at that time. I've already overruled
6 the objection, so I'm not asking for additional
7 documentation from you.

8 MR. COMLEY: Page 27, lines 1 through 12,
9 question, was the proposed sale/purchase of the interior
10 of the island to residents fraudulent in nature? That's
11 the way I read the question. I think fraudulent may need
12 some help in spelling.

13 Again, this is a legal conclusion. There
14 is no foundation for it. The question, of course, is
15 irrelevant to the issues in front of the Commission.
16 It's, again, highly argumentative. It is not appropriate
17 direct testimony. It's not an appropriate direct
18 question.

19 JUDGE STEARLEY: I'm going to sustain on it
20 being irrelevant and a legal conclusion, but I will not
21 strike.

22 MR. COMLEY: Page 27, lines 13 through 21.
23 If this disclosure was not made to the residents, how is
24 it that you are aware of it? Again, we're dealing with an
25 irrelevant subject matter. It is hearsay. It is

1 argumentative.

2 MS. ORLER: Your Honor, I feel it's very
3 relevant because Mr. Burford is a board member for the 393
4 companies. Mr. Hiley is going to be a witness for the 393
5 companies. Mr. Rusaw is both with Folsom Ridge and Big
6 Island Homeowners Association transferring the assets of
7 the utility.

8 JUDGE STEARLEY: Okay. I'm going to
9 sustain the objection. You'll have the opportunity to
10 cross-examine those witnesses when they are here. I
11 believe Mr. Hiley and Rusaw will be here.

12 MR. COMLEY: Page 28, lines 1 through 19.
13 With respect to lines 1 through 3, it's irrelevant. When
14 I questioned Mr. Hiley regarding his present mood, he
15 threw a copy of the e-mail across the table to me. I
16 think that's the reason I objected to that.

17 The remainder of page 28, lines 1 through
18 19, I object on grounds it's argumentative. It
19 erroneously presumes information referred to in the
20 application must be first publicly provided, and that's
21 our objection.

22 JUDGE STEARLEY: I will overrule those
23 objections, these just being statements of Ms. Orler's
24 opinion.

25 MR. COMLEY: Page 28, lines 20 through 21.

1 Again, this presumes what real estate is being
2 transferred, the -- presumes legal description must be
3 provide as part of the application.

4 MS. ORLER: Do not residents on Big Island
5 have a right to know what real estate is being transferred
6 to them that they are going to have responsibility and
7 liability for?

8 MR. COMLEY: I think that will be
9 argumentative.

10 JUDGE STEARLEY: I believe all the assets
11 to the proposed transfer are outlined in the application
12 for transfer.

13 MS. ORLER: There was a blank page marked
14 Exhibit E, I believe, that was supposed to contain real
15 estate information but it was blank.

16 JUDGE STEARLEY: I'm going to overrule the
17 objection, but I note that I believe the transfer of
18 assets, those assets, if they have not already been so
19 identified, will be identified by the end of this hearing
20 in completion. That will come in as your lay opinion at
21 this present time.

22 MR. COMLEY: I would add, I'm not -- Judge
23 Stearley, you may give us too much credit. We may not be
24 able to have the legal description prepared for the deed
25 until approval, if we get approval. That will require

1 some title work. And I think that there is perhaps a
2 legal description that's out there, but it won't be the
3 exact one. And we wanted to make sure title work was done
4 at the right time so that that legal description could be
5 prepared by survey or otherwise.

6 JUDGE STEARLEY: If the Commission decides
7 it does, in fact, have jurisdiction and rules on the
8 transfer, I'm sure any condition of transfer would require
9 that that legal description be filed with the Commission.

10 MR. COMLEY: Very well.

11 JUDGE STEARLEY: Next objection.

12 MR. COMLEY: Page 29, lines 1 through 9,
13 and lines 10 through 18. Lines 1 through 9, the question
14 is, throughout the 18 months of these proceedings before
15 the Commission, Mr. Golden and Mr. Rusaw have devoted a
16 great deal of their testimony to the future development of
17 Big Island. However, what relevancy does it have?

18 Again, it's argumentative. The answer
19 contains opinion and conclusions without any
20 qualification.

21 JUDGE STEARLEY: I will overrule based on
22 my prior statements that this can come in as Ms. Orler's
23 opinion, her lay opinion.

24 MR. COMLEY: Page 29, lines 19 through 20,
25 over to page 30, lines 1 through 8. Can residents of Big

1 Island, Complainants and Intervenors provide testimony and
2 support to prove that Mr. Golden and Mr. Rusaw were
3 directly involved?

4 The question and answer is argumentative
5 and self-serving.

6 MS. ORLER: I don't see how it's
7 argumentative or self-serving when I have documents that
8 contain both Mr. Rusaw's signature and Mr. Golden's
9 signature with regards to this utility, its construction,
10 et cetera.

11 MR. MILLS: And, your Honor, if I had a
12 witness who filed testimony that was not self-serving, I'd
13 make them rewrite it. That's the whole point. I don't
14 believe that's a valid objection.

15 JUDGE STEARLEY: I will overrule.

16 MR. COMLEY: I disagree with Public
17 Counsel. The idea is not to have self-serving testimony.
18 The idea is to present facts that support one's case.
19 Now, in that case it could be considered self-serving, but
20 this is just complete self-serving argument, and that can
21 be done in a brief.

22 MS. ORLER: I have the facts.

23 JUDGE STEARLEY: I've already overruled the
24 objection. Let's proceed.

25 MR. COMLEY: Page 30, lines 13 through 17.

1 Was Mr. Golden personally made aware of the incorrect
2 installation of the water and sewer utility lines? Did
3 Mr. Golden and Mr. Rusaw under signature to residents
4 verify the correct installation of the water and sewer
5 utility?

6 Again, it is argumentative, it's hearsay,
7 and there's unauthenticated material in the answer.

8 MS. ORLER: I have the document. I believe
9 it's a part of Mr. Pugh's -- the digging of test holes.

10 MR. PUGH: Yes.

11 MS. ORLER: Mr. Pugh has already submitted
12 that as a part of evidence and it's been -- or I mean
13 marked, and we have --

14 JUDGE STEARLEY: I'll reserve ruling on
15 that until such time as that evidence is offered for
16 admission.

17 MS. ORLER: Can I offer it now?

18 JUDGE STEARLEY: No. Let's proceed.

19 MR. COMLEY: Page 31, lines 1 through 3.
20 Again, that presumes information must be provided to
21 persons not members of the association. The question is,
22 for what purpose and when was the Big Island Homeowners
23 Association name changed?

24 MS. ORLER: This is -- this goes back to
25 the owning and controlling of the association by Folsom

1 Ridge, and this is further proof that the residents and
2 even the true members of the Big Island Homeowners
3 Association have no control over any aspect.

4 MR. COMLEY: Your Honor, I think the idea
5 of -- would be for Ms. Orler not to repeat the arguments
6 she wants to make to the Commission I response to the
7 objections but to let the hearing examiner and the judge
8 know why they are relevant, and I think that's not what
9 she's doing. She is augmenting testimony with argument
10 about what she wants accomplished here. That does not go
11 to the objection.

12 JUDGE STEARLEY: I will agree. Ms. Orler,
13 I know you're not an attorney. You need to try to direct
14 your responses directly to the objections. However,
15 Mr. Comley, I do believe Ms. Orler's doing her best shot
16 at trying to do so. I'm going to overrule on the basis of
17 this just her personal impressions and opinion. It will
18 be given the weight accorded.

19 MR. COMLEY: Page 31, line 6 through 8.
20 Why did the association not begin the billing for the
21 utility services as soon as individuals were connected?

22 It's speculation. There is no foundation
23 for that question or answer.

24 JUDGE STEARLEY: And I'm just going to
25 sustain that as being speculation. Next objection.

1 MR. COMLEY: Page 31, lines 9 through 12.
2 Who is the owner of the water and sewer utility on Big
3 Island? There's no foundation for that, and it's hearsay.

4 MS. ORLER: I have documents to prove
5 foundation so that it wouldn't be hearsay.

6 MR. COMLEY: As it stands now, there's no
7 foundation and it's hearsay.

8 JUDGE STEARLEY: Are these part of the
9 documents you intend to offer when we get through?

10 MS. ORLER: Yes, sir.

11 JUDGE STEARLEY: At this point I'll reserve
12 ruling until those documents are offered.

13 MR. COMLEY: Page 31, lines 13 through 16,
14 and I think my objection in my prefiling did lack a one.
15 13 through 16, does that mean that Mr. Golden have
16 provided false or conflicting and/or incorrect
17 information?

18 That is argumentative, it's a legal
19 conclusion, and it's irrelevant.

20 JUDGE STEARLEY: I'm going to sustain on
21 the basis of it being a legal conclusion. I will not
22 strike.

23 MR. COMLEY: Page 32, lines 2 through 6.
24 Again, this is related to the Data Request issues that we
25 have talked about. Have Complainants and Intervenors

1 requested copies of property titles -- excuse me. That's
2 not right. This is entirely different.

3 The questions deal with requested copies of
4 property titles to prove ownership of the utility, have
5 these documents been supplied? Again, that's irrelevant.
6 It misstates the record. No Data Request for title
7 information have been served, and it presumes that such
8 information must be provided.

9 MS. ORLER: I would think it would be
10 relevant for the Commission to either, if they want to
11 approve the Asset Transfer Agreement, to know who owns the
12 utility for relevancy.

13 MR. COMLEY: The question is, have they
14 supplied the titles? It's not whether this is relevant.

15 JUDGE STEARLEY: I will sustain the
16 objection.

17 MR. COMLEY: Page 32, line 7 through 17.
18 The question, since the association was not established
19 with a declaration of covenants until year 2000, how were
20 Mr. Golden and Mr. Rusaw able to impose the declaration of
21 covenants, et cetera. Line 7 through 17.

22 Again, the questions are argumentative.
23 They contain opinions and conclusions and hearsay.

24 JUDGE STEARLEY: Okay. I'm going to
25 overrule based on these are Ms. Orler's personal opinions.

1 They come in as her lay opinion.

2 MR. COMLEY: Page 33, lines 1 through 4.

3 The question talks about a statement between Mr. McElyea
4 and Mr. Golden in a letter that these individuals should
5 be considered members. It is hearsay.

6 MS. ORLER: We have a copy of the document.
7 It is not hearsay.

8 MR. COMLEY: The document has not been
9 authenticated. This refers to a statement made out of
10 court. It is an out-of-court statement offered to prove
11 the truth of the matter. It is hearsay.

12 JUDGE STEARLEY: Okay. Which document is
13 this, Ms. Orler?

14 MS. ORLER: That is -- just one moment.
15 That is Exhibit No. 41, and I think that Mr. McElyea can
16 authenticate this. Would you like for me to read it?

17 JUDGE STEARLEY: Let me find it here. No,
18 I would not like you to read it. Mr. McElyea is not here
19 as a witness, as I recall.

20 MS. ORLER: He's on my witness list.

21 JUDGE STEARLEY: He was not subpoenaed to
22 be a witness by you, and he's not being offered by Folsom
23 Ridge or the Homeowners Association. So when the list of
24 issues and adopting the witness list went out, he is not a
25 witness in this case. He cannot be called upon to

1 authenticate this document.

2 MS. ORLER: So even though I had him listed
3 as a witness --

4 JUDGE STEARLEY: You did not subpoena him
5 as a witness to bring him into this matter.

6 MS. ORLER: I guess I'm just not
7 understanding the legal procedures here.

8 JUDGE STEARLEY: Mr. Comley, what would
9 your response be?

10 MR. COMLEY: I think throughout the
11 proceeding I've mentioned to the Commission more than once
12 that I believe that, despite the pro se status of the
13 Complainants, they are expected to follow the same rules
14 as the rest of us do, and that is really the ruling of the
15 courts. They should be expected to follow the same rules,
16 and if they do not, they bear the same consequences.

17 I think the Commission rules were clear on
18 how witnesses were to be assigned to this case. There are
19 other ways Ms. Orler could have used to get authentication
20 of this document. Exhibit 41 has margins filled with
21 remarks. It's -- besides the fact that there will not be
22 an authenticating witness, the document itself is not in a
23 position to even be authenticated.

24 MS. ORLER: Your Honor, I'm terribly
25 confused. Mr. McElyea is seated right there. Because he

1 was not subpoenaed, why does that mean, even though he was
2 on my witness list to call, he's here and available?

3 JUDGE STEARLEY: He's here, has entered an
4 appearance in this matter, and attorneys are not
5 witnesses. The capacity that he has appeared before the
6 Commission is as an attorney, and he was not subpoenaed to
7 be a witness, so he will not be a witness in this matter.

8 MS. ORLER: Okay.

9 JUDGE STEARLEY: I will sustain the
10 objection to being hearsay, and that exhibit will not be
11 received into evidence because it is not authenticated.

12 Next objection, Mr. Comley.

13 MR. COMLEY: On the same page, lines 5
14 through 8, was this a unilateral decision made between
15 Mr. McElyea and Mr. Golden and not a bilateral agreement
16 involving the mutual consent of the residential
17 homeowners?

18 Our objection would be argumentative and
19 legal conclusions, and it's also based on the previous
20 question and answer. As a consequence of the court's
21 ruling on that, the judge's ruling on that, I would say it
22 needs to be -- the objection needs now to be considered
23 whether it's relevant.

24 MS. ORLER: I believe it to be relevant,
25 your Honor, in the fact that's why we are here, because we

1 have individuals that are being billed and receiving
2 service by the Big Island Homeowners Association who are
3 not members.

4 JUDGE STEARLEY: That evidence can come out
5 through your cross-examination of the parties that are
6 here. I'm going to sustain this objection. I will not
7 strike.

8 MR. COMLEY: Page 33, lines 9 through 18,
9 through page 34, lines 1 through 13. Excuse me. Lines 1
10 through 3. This is the portion that relates to the
11 discovery issues that Ms. Orler and I visited with Judge
12 Stearley about last week, and I think the resolve of this
13 should be similar to the way we resolved the objection
14 posed back on page 3 where I think the same subject matter
15 was referred to.

16 JUDGE STEARLEY: And I agree, and we'll
17 move on to the next objection.

18 MR. COMLEY: Page 34, lines 7 through 9.
19 Again, we object that it presumes information of the
20 nature requested in the question, did Mr. Golden provide a
21 cost analysis, that presumes information of this nature
22 needs to be provided.

23 JUDGE STEARLEY: Was this information
24 requested, Ms. Orler?

25 MS. ORLER: Requested from Ms. Holstead,

1 yes.

2 MR. COMLEY: The question refers to
3 Mr. Golden.

4 JUDGE STEARLEY: It does. I'm going to
5 sustain. I will not strike. Let's move on.

6 MR. COMLEY: Page 35, lines 1 through 13.
7 How do you know this? Residents who were told this had
8 come to the Complainants in this case for clarification.
9 Again, that portion is hearsay.

10 What was your response to these
11 individuals? Again, it's a hearsay. It's argumentative.
12 There are opinions and conclusions throughout the answer.

13 MS. ORLER: It's what happened. It's my
14 direct statement as to what happened when we were asked
15 questions regarding PSC regulation and rates as opposed to
16 393.

17 MR. MILLS: Your Honor, I think the first
18 part of the question simply it's not offered to prove the
19 truth of the matter. It's simply to set up the second
20 part, which is what is Ms. Orler's response, which is
21 something of which Ms. Orler has direct and immediate
22 knowledge of.

23 JUDGE STEARLEY: I agree, and I overrule.

24 MR. COMLEY: Page 35, lines 14 through 18.
25 Our objection would be hearsay. Again, it presumes that

1 the information requested was required to be provided.
2 Were residents provided a cost basis to support the
3 information they were being provided about increased
4 utility costs?

5 MS. ORLER: Again, it's extremely relevant.
6 That's what people based their vote on in preference of a
7 393 versus PSC regulation.

8 JUDGE STEARLEY: This is hearsay,
9 Ms. Orler, in that you're reporting responses of other
10 people. So I'm going to sustain the objection on that
11 basis.

12 MR. COMLEY: Page 36, lines 1 through 5.
13 Was there a line item associated with the reimbursement at
14 the Association to Folsom Ridge for \$7,000 owed to Folsom
15 Ridge? The answer is no.

16 Our grounds for objection is that it's
17 hearsay. It's also opinion, and it is also a conclusion
18 of the witness not based upon adequate foundation.

19 MS. ORLER: I do have budgets from the HOA
20 for the time in question and the amount in question, and
21 it is not reflected in the budgets that were provided us
22 by Mr. Golden and Mr. Rusaw.

23 JUDGE STEARLEY: Are those documents being
24 offered into evidence?

25 MS. ORLER: I can later on, yes, sir.

1 JUDGE STEARLEY: At this time I'm going to
2 reserve a ruling on that.

3 Let's take us to the end of page 36, and at
4 that time we will take a ten-minute break, give my court
5 reporter a rest.

6 MR. COMLEY: Page 36, lines 8 through 10.
7 The question is about the amount owed, why is this amount
8 owed not showing as a reoccurring and accruing line item
9 expense?

10 And this is an argumentative question that
11 contains opinions and conclusions. The answer contains
12 opinions and conclusions that are not based on adequate
13 foundation.

14 JUDGE STEARLEY: I will overrule based on
15 it's just Ms. Orler's personal opinion, and it will be
16 treated with the weight that so ascribes.

17 MR. COMLEY: We could go from page 36, this
18 is a fairly lengthy objection, page 36, lines 11 through
19 19, page 37, lines 1 through 20, the entire page, and
20 page 38, lines 1 through 7. We -- the objection is that
21 this entire area is argumentative and it is filled with
22 legal conclusions.

23 MS. ORLER: And what are you referring to
24 specifically, Mr. Comley?

25 MR. COMLEY: The questions start out with,

1 as per the agreement for sale and transfer of water
2 distribution system and wastewater system, did the seller
3 have the approval of the required majority of the
4 membership?

5 MS. ORLER: I think that's extremely
6 relevant.

7 MR. COMLEY: The issue is whether or not
8 there are -- this is legal conclusions and argument.

9 MS. ORLER: I have a copy of the amended
10 and restated covenants and conditions of the Big Island
11 Homeowners Association which dictates how the vote should
12 be taken. I also have in those restricted covenants and
13 conditions how meetings should be called.

14 MR. COMLEY: And these are legal
15 conclusions that she's rendering in connection with the --

16 JUDGE STEARLEY: These are legal
17 conclusions. I will sustain the objection. I will not
18 strike, however.

19 MR. COMLEY: Your Honor, I can stop right
20 there.

21 JUDGE STEARLEY: All right. Let's all take
22 a break. We'll reconvene here in about ten minutes' time.

23 (A BREAK WAS TAKEN.)

24 JUDGE STEARLEY: All right. We are back on
25 the record.

1 Mr. Comley, I believe we've had a fair
2 opportunity to get a feel for the category of objections
3 you have in Ms. Orlor's various portions of her testimony,
4 and I'm hoping we can come up with an alternative, perhaps
5 shorten this process.

6 MR. COMLEY: Judge, let me advise you that
7 during the break I had an opportunity to visit with
8 Mr. McElyea, and I think we understand -- the nature of
9 our objections have been is somewhat similar. There have
10 been a lot of similar objections, and there's similar
11 objections to follow. And I think we have also grown
12 accustomed to the rulings that you're making on those
13 objections and understand how that could be.

14 What I would propose is that, even though
15 it may look a little bit complex in the record, I would be
16 willing for the court, for you to take these with the case
17 and make rulings as the court deems necessary in
18 connection with the evaluation of the evidence after we
19 brief this, and then I'm going to propose to you that,
20 something that Mr. Mills suggested we do undertake, I
21 would propose that we brief this matter rather than have
22 closing arguments.

23 I've also visited with Ms. Holstead and
24 with our clients with respect to the closing date on the
25 transaction. We are prepared to move it in order for the

1 Commission and the parties to have a sufficient time for
2 the briefs to be filed and considered.

3 That said, there are a few objections to
4 the surrebuttal I wanted to bring directly to your
5 attention before we close out this section.

6 JUDGE STEARLEY: All right. And what I was
7 going to suggest is that in character with what has been
8 heard and been ruled upon, that all objections falling
9 kind of under the category of Ms. Orler's feelings or
10 impressions be overruled simply as coming in as her lay
11 opinion. The relevance issues we may want to address, and
12 if you'd like us to take those --

13 MR. COMLEY: With the case?

14 JUDGE STEARLEY: -- with the case, we can
15 certainly do that, as well as the hearsay type of
16 objections. Are there any specific ones you would like us
17 to go ahead and address at this time?

18 MR. COMLEY: Let's turn to Ms. Orler's
19 surrebuttal testimony, which I think has been marked as
20 Exhibit 3, and I want to bring the Commission's attention
21 to page 7, lines 7 through 20, through page 9, lines 1
22 through 17.

23 JUDGE STEARLEY: All right. I am there.

24 MR. COMLEY: The rules of the Commission
25 require that surrebuttal testimony be in rebuttal to the

1 rebuttal testimony of a witness. The point here is that
2 the material that's on these pages, and several that will
3 follow that, is material that could have been included in
4 Ms. Orler's direct testimony, and also could have been
5 rebutted by witnesses for the company and other witnesses
6 that are parties here. This is an improper use of
7 surrebuttal testimony. The subject matter could have been
8 put in her direct or perhaps even her rebuttal.

9 MS. ORLER: I apologize that it's not
10 formatted correctly. It obviously is relevant to the
11 case.

12 JUDGE STEARLEY: Ms. Orler, let me explain
13 the objection just a little bit. I believe what
14 Mr. Comley, and he can correct me if I'm misstating him,
15 is that this testimony was appropriate for direct
16 testimony. Surrebuttal testimony is supposed to only
17 relate back to rebuttal testimony of the other parties.
18 Am I restating that correctly?

19 MR. COMLEY: That's correct, Judge.

20 JUDGE STEARLEY: So this exceeds the scope
21 of what surrebuttal testimony should be composed of.
22 That's not a question of relevance. It's a question of
23 whether or not this is supplementing direct testimony
24 because it does not respond to the rebuttal testimony of
25 the other witnesses.

1 Mr. Mills, if you would like to offer a
2 viewpoint on that, you're certainly free to.

3 MR. MILLS: No. I'll note that Commission
4 Rule 4 CSR 240-2.1307(d), is what Mr. Comley is referring
5 to, it says that surrebuttal testimony shall be limited to
6 matters raised in other parties' rebuttal testimony.

7 MS. ORLER: But this is because in
8 Mr. Rusaw's testimonies he states that the 393 companies
9 are independent of the developer and that the developer
10 has no interest or involvement.

11 JUDGE STEARLEY: Is he stating that in his
12 rebuttal testimony or does he state that in his direct
13 testimony?

14 MS. ORLER: I think he states that in his
15 rebuttal testimony, if my memory serves me correctly.

16 JUDGE STEARLEY: Mr. Comley?

17 MR. COMLEY: It's not clear from the
18 question, in fact, the question that starts the passage,
19 what has changed regarding the issues of the water and
20 sewer utility since the filing of your formal complaint
21 nearly 19 months ago? That question and the explanation
22 given has nothing to do with Mr. Rusaw's rebuttal
23 testimony. There are no facts explained in rebuttal that
24 go to this testimony. It is material that could have been
25 in the direct.

1 I would add that the unfairness of this
2 rule -- or the unfairness of allowing the testimony is
3 that this material will not have a rebuttal from the
4 company or other parties. It is material that does not
5 rebut. It is new material, which by its dating could have
6 been supplied in direct testimony. It truly is
7 supplemental direct testimony, even though it's been named
8 something else.

9 JUDGE STEARLEY: Okay. If I'm looking at
10 the lines correctly, it's page 7, line 7 through 20,
11 through page 9, lines 1 through 17?

12 MR. COMLEY: Yes.

13 MS. ORLER: But it is speaking directly to
14 what Mr. Rusaw provided in his testimony of how the vote
15 was taken for the transfer of assets, that it was
16 tabulated in different ways, that the 393 companies did
17 not involve the developer. It's rebutting Mr. Schneider's
18 testimony.

19 JUDGE STEARLEY: Is it rebutting their
20 rebuttal testimony --

21 MS. ORLER: Yes.

22 JUDGE STEARLEY: -- is the issue?

23 MS. ORLER: Yes. Uh-huh.

24 MR. COMLEY: Again, I can see nothing in
25 the passages that deal with anything that couldn't have

1 been placed in Ms. Orler's direct case if this is part of
2 her direct case, and that's -- it could have been, and it
3 should have been.

4 MS. ORLER: But it's --

5 MR. COMLEY: This is not rebutting anything
6 in the rebuttal testimony of the other witnesses.

7 MS. ORLER: It is.

8 JUDGE STEARLEY: Ms. Orler, can you --
9 well, which person are you saying this is rebutting their
10 rebuttal testimony? Mr. Rusaw's?

11 MS. ORLER: Actually, several different
12 individuals. On page 9, line item E is rebutting
13 Mr. Schneider, who had filed testimony with regards to the
14 393 companies in which he explained that they did a walk
15 through of the utilities.

16 And I believe Mr. Rusaw also explained the
17 same thing about a walk through of the facilities and that
18 there was a contractor involved and that there was also an
19 engineer involved. That portion is rebutting that, that
20 none of those individuals were independent.

21 Also goes back to the -- what Mr. Rusaw
22 stated about is Folsom Ridge associated with 393
23 companies.

24 JUDGE STEARLEY: If you can continue to
25 direct me to specific portions.

1 MS. ORLER: Okay. I'm sorry. Item D on
2 page 9, the creation of the vote for majority support 393
3 companies was tied to a vote for the transfer of utility
4 assets within the current HOA that's being owned and
5 controlled by the developer through the voting of lots.
6 Mr. Rusaw provided testimony.

7 MR. COMLEY: That was in his direct
8 testimony.

9 JUDGE STEARLEY: As far as E there,
10 Mr. Comley, do you maintain that was also in his direct
11 testimony?

12 MR. COMLEY: The walk through and
13 descriptions of the walk through were in Mr. Rusaw's
14 direct testimony or in the direct testimony of Mr.
15 Krehbiel and Mr. McDuffey.

16 MS. ORLER: And Mr. Schneider as well.

17 MR. COMLEY: And the direct testimony of
18 Mr. Schneider. This is something that could have been in
19 Ms. Orler's rebuttal, and now it shows up in surrebuttal.

20 JUDGE STEARLEY: What I'm going to do is to
21 the extent that any of this evidence is rebutting direct
22 testimony or supplementing direct testimony, I will
23 sustain the objection. I will not strike from the record.

24 If I find on further review that any
25 information there actually does rebut rebuttal testimony

1 as proper surrebuttal should, the Commission will give the
2 appropriate weight to those portions of the testimony.

3 MR. COMLEY: I bring the same objection to
4 the Commission's attention respecting pages 21, 22, 23,
5 page 24, not all of page 24, but page 24, lines 1 through
6 4. Again, issues about the amended and restated covenants
7 and conditions were part of Ms. Barb Brunk's testimony and
8 had been a part of direct testimony.

9 This is again supplemental to either
10 Ms. Orler's rebuttal or to her direct. The amended and
11 restated covenants have been part of their complaints.
12 The issues about the bylaws and the membership meetings,
13 this is all supplemental to information that was in
14 Ms. Orler's direct.

15 MS. ORLER: It is rebutting Mr. Rusaw's
16 testimony in that he explains how the vote was tabulated,
17 that it could be tabulated in a variety of different ways.

18 MR. COMLEY: And this was in Mr. Rusaw's
19 direct testimony. The tabulation of the voting was in
20 Mr. Rusaw's direct testimony.

21 MS. ORLER: I don't believe the vote had
22 taken place yet.

23 MR. COMLEY: No. It had. We filed the
24 testimony after January 29th. Testimony was filed
25 February 12th -- 13th.

1 JUDGE STEARLEY: Ms. Orlor, can you point
2 out any specifics of this that you believe are responding
3 to rebuttal testimony from the other witnesses?

4 MS. ORLER: If it would be allowed, I would
5 like to take the opportunity this evening, whatever time
6 that may be, to go over the testimonies and make certain
7 that what I have put in my surrebuttal is actually
8 rebutting that, rather than take the court's time today.

9 JUDGE STEARLEY: Well, what I will do, as
10 opposed to us revisiting this, is I will do what I did
11 with the last objection. I will sustain it to the extent
12 that it does provide rebuttal testimony to direct
13 testimony, and if the Commission when its taking review of
14 all this with the case discovers portions of this which
15 are, in fact, proper surrebuttal, we will give those the
16 appropriate weight and consideration.

17 MR. COMLEY: The same objection would apply
18 to page 25, lines 8 through 19, pages 26, 27, through
19 page 28, lines 1 through 8. Starting on page 25, for
20 instance, there is reference to the testimony of Michael
21 McDuffey, but the testimony she wants to rebut is his
22 local hearing testimony on June 6th, 2006, and that was
23 something that could have been done during her direct
24 examination if she wanted to do it.

25 But by doing it at this level, she is not

1 rebutting what Mr. McDuffey said in terms of his
2 prefiling, which I think the rule is directing us to do .
3 This is something that could have been in direct testimony
4 and was not included.

5 MS. ORLER: The reason I'm referencing the
6 June 6th testimony is to show that it is in contrast and
7 not consistent with the testimony he provided in rebuttal.

8 MR. COMLEY: And I think period is such
9 that this could have very easily been in direct testimony.
10 That way Mr. McDuffey could have explained his answers
11 during the local hearing, and he can't that now unless you
12 allow me to have supplemental surrebuttal.

13 MS. ORLER: But he was explaining his
14 answers in his rebuttal. That's what I'm saying.

15 JUDGE STEARLEY: The issue is the purpose,
16 the proper purpose of surrebuttal testimony, and I will
17 sustain the objection in the same manner I have with your
18 prior two. Does that take us through --

19 MR. COMLEY: Yes, it does.

20 JUDGE STEARLEY: -- these, Mr. Comley?

21 MR. COMLEY: Yes, it does.

22 JUDGE STEARLEY: Okay. Now we have the
23 issue of the various documents Ms. Orler wanted to offer
24 in support of her testimony, which we need to take up
25 before we submit her for cross-examination.

1 And, Ms. Orler, at this time I'm assuming
2 you wish to offer -- there's been two pieces of evidence
3 I've already ruled upon that were not received as being
4 hearsay and not properly authenticated. At this time I'm
5 assuming you wish to offer the remainder of those exhibits
6 that we marked into evidence; is that correct?

7 MS. ORLER: That is correct, yes.

8 MR. COMLEY: For the record, those would be
9 Exhibits 21 through 58 -- excuse me -- 46?

10 JUDGE STEARLEY: That would be correct, and
11 I believe I've already ruled on Exhibit No. 41, if I'm not
12 mistaken.

13 MR. COMLEY: That's correct. Your Honor,
14 we do have objections to those exhibits.

15 JUDGE STEARLEY: Please proceed.

16 MR. COMLEY: With respect to Exhibit 21, it
17 purports to be bank documents from Central Bank of Lake of
18 the Ozarks. These are hearsay documents. They have not
19 been provided under the business records exception to the
20 hearsay rule. There's no witness to tell us how they are
21 kept, maintained, and whether or not they were kept
22 properly. There's no one to authenticate whether these
23 are originals or not. There seems to be a number of other
24 stray marks on them, and the source of those markings is
25 unclear and may in turn obscure the meaning of the

1 document. We'd object on grounds of hearsay.

2 JUDGE STEARLEY: Mr. Comley, before we go
3 through each and every one of these, would your
4 objections -- I'll allow you a few moments to look through
5 the documents. Would your objections be substantially the
6 same for all of these documents?

7 If there's additional ones we need to pull
8 out specifically, we can do that, but in the manner of
9 trying to move things a little bit quicker here as we go
10 along.

11 Ms. Orler, do you have copies of all your
12 exhibits before you?

13 MS. ORLER: Yes, sir, I do.

14 JUDGE STEARLEY: And do you understand the
15 nature of the objections that were raised to that first
16 document?

17 MS. ORLER: Yes, I do, but each one of
18 these individuals would be willing to testify by phone
19 call to authenticate this document that they wrote.

20 JUDGE STEARLEY: At this time the witness
21 list has been established. I mean, it would be within
22 your option to try to subpoena a witness, although we have
23 rules regarding that.

24 MR. COMLEY: Your Honor, excuse me.

25 JUDGE STEARLEY: Yes. Go ahead,

1 Mr. Comley.

2 MR. COMLEY: Our objections would be
3 similar, if not identical to the one I just had for the
4 exhibit I just objected to, except with respect to
5 Exhibit 23, a copy of the escrow agreement, and
6 Exhibit 36, a copy of the Circuit Court of Camden County,
7 Missouri lawsuit, Case No. 07CM-CC00040. We have no
8 objection to those two exhibits.

9 JUDGE STEARLEY: Are there any other
10 objections to those two exhibits by any of the other
11 parties, to the admission of those two?

12 (No response.)

13 MR. COMLEY: Your Honor, I would have no
14 objection to Exhibit 43.

15 MS. ORLER: Which is what, Mr. Comley?

16 MR. COMLEY: That would be a series of
17 invoices, I think, directed to Cathy Orler at
18 3252 Big Island Drive.

19 JUDGE STEARLEY: That's what I would have.

20 MS. ORLER: I can authenticate those.

21 MR. COMLEY: That's what I thought.

22 MR. MILLS: And, your Honor, I'll note that
23 on at least some of these exhibits, and I'm not sure -- we
24 can run through them all -- but Phil Hiley is either the
25 author or the recipient of them. I see Jim Merciel's name

1 on some of them. Ben Pugh's name appears on a number of
2 them.

3 MS. ORLER: Ms. Holstead is here.

4 JUDGE STEARLEY: For starters, let's look
5 at these three, Exhibits 23, 36 and 43.

6 MR. COMLEY: Yes, sir.

7 JUDGE STEARLEY: Mr. Comley has no
8 objections. Are there objections by any of the other
9 parties to the admission of these documents?

10 MS. HEINTZ: No, your Honor.

11 MS. HOLSTEAD: No, your Honor.

12 JUDGE STEARLEY: Hearing none, these will
13 be received and admitted into evidence.

14 (EXHIBIT NOS. 23, 36 AND 43 WAS RECEIVED
15 INTO EVIDENCE.)

16 JUDGE STEARLEY: The remainder, Mr. Comley,
17 I assume the same objections stand with the remainder of
18 these documents?

19 MR. COMLEY: Yes, your Honor.

20 JUDGE STEARLEY: Mr. Mills, you made note.

21 MR. MILLS: For example, the second page of
22 Exhibit 21, at least from the handwritten portion of it
23 seems to have something to do with Ben Pugh. I'm not sure
24 exactly what.

25 MS. ORLER: May I explain the relevance or

1 is that not appropriate at this point because that's not
2 the objection?

3 JUDGE STEARLEY: Well, relevance is not the
4 objection. The objection is that these documents are
5 hearsay and not properly authenticated documents.

6 MR. MILLS: Exhibit 27 also appears to be
7 an e-mail to Ben Pugh.

8 MS. ORLER: Could Mr. Pugh authenticate
9 those that have his name on it?

10 JUDGE STEARLEY: When Mr. Pugh is on the
11 stand, he can have the opportunity to authenticate those.

12 MR. MILLS: Exhibit 30 is a letter, among
13 other people, to Mr. Rusaw.

14 MS. ORLER: Which I think we have several
15 of those written to Mr. Rusaw, or copying him in.

16 MR. MILLS: Was Exhibit 33 one of the ones
17 that was not objected to?

18 JUDGE STEARLEY: No. That had an
19 objection.

20 MR. MILLS: This seems to be an e-mail from
21 Phil Hiley, who will be a witness. At the top it says
22 Tonie Hiley. It's signed Phil. Same with Exhibit 34.
23 Exhibit 35 seems to be an e-mail to Ben Pugh.

24 MS. ORLER: Exhibits 37, 38 and 39 all
25 involve Ms. Holstead, and Mr. Merciel is on one.

1 JUDGE STEARLEY: Ms. Holstead is also not a
2 witness in this matter. She is an attorney. If
3 Mr. Merciel is on here, he could possibly authenticate a
4 document during his testimony.

5 MS. ORLER: And my name is referenced.

6 JUDGE STEARLEY: I have on Exhibit 38. Are
7 there others that you can identify for me?

8 MS. ORLER: Well, I would think that the
9 Missouri Public Service Commission could authenticate what
10 was submitted by Ms. Holstead at the public hearing held
11 in June. That's Exhibit No. 39. That was entered in as
12 evidence.

13 MS. HOLSTEAD: Your Honor?

14 JUDGE STEARLEY: Yes, Ms. Holstead.

15 MS. HOLSTEAD: Exhibit 37, 38 and 39 all
16 purport to be written by myself. Exhibit No. 38 by
17 notation above says that none of the complainants were
18 intended receivers of that e-mail. It was not sent to
19 them. I don't know how they received it.

20 But nevertheless, I think I would be, you
21 know, willing to let 37, 38 and 39 all come in except for
22 the fact they all have things written all over them that
23 are not my notes, not my writing, and some of it is, you
24 know, pretty inflammatory. I guess if you could receive
25 it minus the notes or some notation comes in as to who

1 wrote those notes.

2 JUDGE STEARLEY: As to testimony provided
3 at -- is this our local public hearing or was this a
4 different hearing?

5 MS. HOLSTEAD: This was the June 2006
6 public hearing held in Camdenon. I was not there, so I
7 submitted a letter to the Commission.

8 MR. MILLS: Judge, I believe it was a PSC
9 hearing.

10 MS. ORLER: Yes, it was.

11 MR. MILLS: Public hearing. That was your
12 question.

13 JUDGE STEARLEY: Was the letter -- you
14 weren't at the local public hearing, so you did not give
15 testimony there, is that my understanding?

16 MS. HOLSTEAD: That is correct. I did not
17 provide any sort of sworn testimony. I simply wrote a
18 letter dated May 17th, 2006, and submitted it to the
19 Commission.

20 JUDGE STEARLEY: But this is not that
21 letter, Exhibit 39?

22 MS. HOLSTEAD: Exhibit 39 is that letter,
23 except for the --

24 JUDGE STEARLEY: Except for the
25 additional --

1 MS. HOLSTEAD: -- all the additional
2 notations which have been put on here, and I think those
3 notations, you know --

4 JUDGE STEARLEY: If I strike all the --

5 MS. HOLSTEAD: If you strike the notations,
6 I have no problem with Exhibit 39. Same with 38, and same
7 with 37.

8 MR. MILLS: If Ms. Holstead is willing to
9 authenticate the underlying letters, I imagine Ms. Orler
10 can shed some light on who wrote the notations.

11 MS. ORLER: That is correct. I'll take
12 responsibility for the notations.

13 JUDGE STEARLEY: Well, the notations would
14 have to be stricken.

15 MR. COMLEY: We would object to any
16 introduction of this document if it wasn't clean.

17 JUDGE STEARLEY: And I would sustain that
18 objection. Let's continue on here, though. Let's pull a
19 few more out, and then I'll look at these in isolation.
20 Are there any others that we have witnesses that are going
21 to possibly be able to authenticate?

22 MR. MILLS: 41 and 42, if Mr. McElyea
23 wanted to, I think he could authenticate these. I
24 understand that he doesn't want to. Was 44 objected to?

25 MR. COMLEY: Yes. I think Ms. Orler, who I

1 assume was formerly Ms. Litty --

2 MS. ORLER: That is correct.

3 MR. MILLS: -- could authenticate that or
4 at least make some attempt to.

5 JUDGE STEARLEY: Which one are you looking
6 at?

7 MR. MILLS: 44.

8 MS. ORLER: Yes. These are -- I was
9 formerly Mrs. Litty, and I am no longer.

10 JUDGE STEARLEY: We're going to come back
11 to these individually in a moment. I just want to pull
12 those out so I can make a ruling on the remaining.

13 MR. MILLS: I think 45 and 46 Mr. Rusaw
14 could authenticate or dismiss when he's on the stand.

15 MR. COMLEY: Regarding 45, Judge, this is a
16 copy of what's been addended to Ms. Brunk's testimony.
17 Ms. Brunk's testimony is a copy of the certified copy
18 that's on file with the recorder's office. No. 45,
19 Exhibit 45 is, like the other document we were referring
20 to, Exhibit 39, it contains comments, commentary in the
21 margin, and it is a compromise of the document. And I
22 think if we were to have 45 in, it's already in
23 Ms. Brunk's testimony and we intend to offer that
24 tomorrow.

25 JUDGE STEARLEY: Was that the same with

1 Exhibit 46 were you saying as well?

2 MR. COMLEY: I have not --

3 MS. ORLER: You did not include 46. You
4 did not include bylaws.

5 MR. COMLEY: Right. We did not include the
6 bylaws, and I have not compared this with what are the
7 official bylaws of the corporation. So my thoughts would
8 be, I don't think we have any problem in supplying the
9 Commission with a copy of the bylaws of the corporation.
10 We could get a copy to the Commission and show it to the
11 parties and this is what we're prepared to stipulate to
12 admit.

13 MS. ORLER: This was given to me by Folsom
14 Ridge.

15 JUDGE STEARLEY: And we could accept that
16 as a late-filed exhibit.

17 MR. COMLEY: Certainly.

18 JUDGE STEARLEY: Okay. Any other items
19 here?

20 MS. ORLER: Exhibit 44, I was Cathy Litty.

21 JUDGE STEARLEY: I pulled that one out, and
22 we'll come back to those in just a moment.

23 MR. COMLEY: Upon reflection, Judge,
24 there's no objection from Folsom Ridge on Exhibit 44.

25 JUDGE STEARLEY: Any others here before I

1 look at these individually?

2 Okay. I'm looking at Exhibit 21, and
3 Mr. Mills, as you pointed out, on the second page of that
4 appears to be the signature of Benjamin Pugh. And I'm not
5 sure what that transaction receipt would be related to, if
6 it's any of these other documents or if it's just that
7 singular document.

8 MS. ORLER: Do you want me to explain that?

9 JUDGE STEARLEY: You may make an attempt
10 to, certainly.

11 MS. ORLER: These are debit accounts
12 indicating the payment of funds from the escrow account
13 held at Central Bank for the deposits residents made for
14 their tap purchases. The \$4,800 was for sewer, and \$2,000
15 was for water. In some instances these were combined.

16 So the ones that contain Mr. Pugh's
17 signature, I think Mr. Pugh could testify or authenticate
18 the fact of what I'm telling you, that that's what this
19 was for.

20 JUDGE STEARLEY: That would be the first
21 two pages of this document?

22 MS. ORLER: Yes, your Honor.

23 MR. COMLEY: Your Honor, I can't tell the
24 explanation how the second page is related to the first.

25 JUDGE STEARLEY: I'm having that same

1 problem. I'm going to set that one aside for a moment.
2 With regard to Exhibit 22 -- I'm going to come back to the
3 ones we just pulled out in a moment.

4 MS. ORLER: What are you wanting to know
5 about exhibit --

6 JUDGE STEARLEY: I'm understanding, and I
7 can go through these one by one, but what these documents
8 are, what is the source of your documents, of having these
9 copies, Ms. Orler? Where did you obtain them from?

10 MS. ORLER: Who did I obtain them from?

11 JUDGE STEARLEY: Uh-huh.

12 MS. ORLER: These documents -- well, the
13 Department of Natural Resources documents I obtained from
14 the Department of Natural Resource. Are you talking about
15 all the documents or just the one in this particular
16 grouping involving the escrow account?

17 JUDGE STEARLEY: Well, yeah. This could
18 get a little lengthy here. But with your documents, I'm
19 not seeing any type of affidavits from any custodian of
20 records that could authenticate these documents as being
21 actual copies of documents on file, say Exhibit 22, with
22 the Department of Natural Resources.

23 MS. ORLER: No. When we requested
24 documents from Natural Resources or we made a trip to
25 Springfield, we received the photocopies as this.

1 JUDGE STEARLEY: Exhibit 24?

2 MS. ORLER: Which is?

3 JUDGE STEARLEY: Which is a copy of a
4 letter.

5 MS. ORLER: And you're wanting to know the
6 source of these?

7 JUDGE STEARLEY: I'm wanting to know what
8 our argument might be for authenticating this as an actual
9 document that you received. And actually this was
10 addressed to a Mr. Prather.

11 MS. ORLER: Yes, from Mr. McElyea.

12 Actually --

13 JUDGE STEARLEY: Is there an affidavit for
14 Mr. Prather that would confirm this is an actual letter
15 that he received from Mr. McElyea?

16 MS. ORLER: No, there is not. These
17 letters came from Folsom Ridge. Valerie Kasten, who is an
18 intervenor in this case, took a board position as
19 secretary, and upon her resignation requested that the
20 records be kept in the state of Missouri for residents'
21 convenience and access, and this was a part of those
22 records.

23 JUDGE STEARLEY: Okay. On any of these
24 documents that are before us, and I'm going to list off
25 Exhibit 22, 24, 25, 26, do you have any type of

1 verification or authentication from the parties that these
2 letters were directed to or where they came from to
3 validate them?

4 MS. ORLER: Mr. Pugh could validate his,
5 and Mr. Rusaw --

6 JUDGE STEARLEY: Where's Mr. Pugh?

7 MS. ORLER: He's a part of the grouping
8 that contains debits.

9 JUDGE STEARLEY: Okay. Which document?

10 MS. ORLER: Exhibit 21, eight pages. He's
11 page No. 2.

12 JUDGE STEARLEY: I just listed off
13 Exhibit 22, 24, 25 and 26. So I'm referring to those
14 specific documents.

15 MS. ORLER: Oh, I'm sorry. Exhibit 22 is
16 what the Department of Natural Resources gave us. They
17 didn't give us any affidavit or anything.

18 JUDGE STEARLEY: Right. And you did not
19 request any verifying information from the Department of
20 Natural Resources?

21 MS. ORLER: No. They -- we went there and
22 they gave us this document. Mr. Rusaw can authenticate
23 the others as having been the records.

24 JUDGE STEARLEY: On Exhibit 24, a letter
25 addressed to Mr. Prather, he's not here as a witness, nor

1 is Mr. McElyea. Is there any other means of
2 authenticating this document.

3 MS. ORLER: Mr. Rusaw.

4 JUDGE STEARLEY: It's not a letter
5 addressed to Mr. Rusaw or signed by Mr. Rusaw.

6 MS. ORLER: No, but it was a document in
7 his possession as Folsom Ridge and Big Island Homeowners
8 Association.

9 JUDGE STEARLEY: Possessing a document
10 doesn't get over the hearsay objection. All of these
11 letters at this point are out-of-court statements that are
12 being offered for the proof of the matter asserted in
13 those statements, and they have be authenticated in an
14 appropriate legal manner for me to allow them into
15 evidence.

16 MS. ORLER: Mr. Rusaw could authenticate
17 the May 21st, 2000 letter. It was addressed to him.

18 JUDGE STEARLEY: Okay. Which exhibit is
19 that?

20 MS. ORLER: That is Exhibit 24. Should be
21 the last letter in that dated May the 21st of 2000.

22 JUDGE STEARLEY: Okay. Exhibit 24 that I
23 have before me is a letter to Mr. Prather.

24 MS. ORLER: Yes. There's several letters
25 there in that grouping.

1 MS. HEINTZ: Your Honor, I think Ms. Orler
2 might be referring to what's marked as Exhibit 30.

3 JUDGE STEARLEY: Yeah, because I'm not
4 following you there at all.

5 MS. ORLER: It's the grouping that starts
6 with the letter to Mr. Prather, and there is a letter
7 addressed to Mr. Rusaw dated --

8 JUDGE STEARLEY: I don't believe I have
9 this as a grouping. I believe I have what I'm referring
10 to as a single exhibit.

11 MR. MILLS: If it's helpful, I have
12 Exhibit 30 as a May 21, 2000 letter addressed to --

13 JUDGE STEARLEY: I've got it now. All
14 right. Those are the ones that I pulled out to look at
15 separately. I would like you to focus on the specific
16 ones that I'm listing to you now. Exhibit 22.

17 MS. ORLER: The Department of Natural
18 Resources.

19 JUDGE STEARLEY: Right. Other than the
20 fact you received this copy from them, do you have any
21 means of authenticating this document?

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

23 MR. MILLS: Your Honor, I believe that's
24 the kind of document from a fellow state agency of which
25 you could take official notice.

1 MR. COMLEY: I would object to official
2 notice of those records. That would not be an official
3 notice. You can take official notice of rules and
4 regulations, but as far as the contents of the files of
5 the Department of Natural Resources, they need to be
6 separately authenticated by the author or by the custodian
7 who maintains and keeps them. That would be my
8 contention. That would go beyond the bounds of official
9 or judicial notice.

10 JUDGE STEARLEY: I agree with that, and I
11 am going to sustain that objection. Exhibit 22 will not
12 come into the record.

13 Exhibit 24, letter to E.M. Prather from
14 Charles McElyea. Do you have any independent verification
15 of this being the actual letter sent on October 8, 2003?

16 MS. ORLER: Mr. McElyea's authentication.
17 Can Mr. McElyea authenticate this?

18 JUDGE STEARLEY: As I said before, he's not
19 a witness, so you will not have an opportunity to ask him
20 any questions to authenticate this letter.

21 MS. ORLER: Okay. No, sir.

22 JUDGE STEARLEY: Exhibit 24, the objection
23 is sustained.

24 Exhibit 25, letter to Mr. Welsh signed by
25 Doris Wicker and Keith Wicker.

1 MR. MILLS: And, your Honor, I'll note that
2 this shows that it was carbon copied to someone named
3 Pugh, who I suspect may be Ben Pugh, a witness in this
4 case.

5 JUDGE STEARLEY: All right. We'll hold
6 this one aside 'til later.

7 Exhibit 26?

8 MS. ORLER: Duane Stoyer was copied on this
9 one. Duane Stoyer filed a formal complaint. Mr. Stoyer
10 has since passed away.

11 JUDGE STEARLEY: And Mr. Stoyer was severed
12 out of the case, and no party came in as a substitution
13 for him. The objection is sustained to Exhibit 26. It
14 will not be received.

15 Exhibit 28.

16 MS. ORLER: It's cc'd to committee of Big
17 Island property owners. I was one of those committee
18 members. And it was also e-mailed to Mr. Pugh.

19 JUDGE STEARLEY: Exhibit 28 that I have
20 before me says May 23rd, 2000, Jeff Welsh, Central Band.

21 MS. ORLER: Yes.

22 JUDGE STEARLEY: I don't see any indication
23 of being carbon copied.

24 MS. ORLER: Down at the bottom it says cc'd
25 committee of Big Island property owners.

1 MR. MILLS: Ms. Orler, you're looking at
2 Exhibit 27.

3 JUDGE STEARLEY: Exhibit 28.

4 MS. HEINTZ: It's signed by the Deckards.

5 MS. ORLER: Okay. No, your Honor.

6 JUDGE STEARLEY: Objection's sustained. It
7 will not be received.

8 Exhibit 29 which I have as an invoice to
9 member, is it Vera Joanne Haaker? Are we all looking at
10 the same document? Dated 4/24/2001.

11 MS. ORLER: No, your Honor.

12 MR. MILLS: And, your Honor, this came from
13 Big Island Homeowners Association. I don't know who at
14 Big Island Homeowners Association it came from, but I
15 recognize the P.O. Box 54 in Longmont, Colorado as being
16 Folsom Ridge's address as well. So there's some
17 possibility that perhaps Mr. Rusaw could you authenticate
18 this document.

19 JUDGE STEARLEY: All right. I will put
20 that aside.

21 Exhibit 31, ratification of covenants and
22 conditions, signed by the Kastens, two-page document.

23 MS. ORLER: I would feel that this could be
24 authenticated by Folsom Ridge or Mr. Rusaw.

25 JUDGE STEARLEY: Mr. Comley?

1 MR. COMLEY: Your Honor, the Kastens' note
2 and the fact that this is a document that shows they did
3 not ratify, I think our records show that they did not
4 ratify, and we wouldn't contest that this was not done. I
5 don't know why we need to have the extra exhibit. We
6 would object to it because it contains statements of the
7 Kastens on here, and they're not here to be cross-examined
8 about those statements. That would be the hearsay nature
9 of this document. And because of that, we object to
10 Exhibit 31.

11 Now, if the reason it's being offered is to
12 show that the Kastens had not ratified the covenants and
13 conditions, I think that's already something we're
14 prepared to admit.

15 MS. ORLER: But they have.

16 MR. COMLEY: Then the reason you're
17 offering the exhibit is because of the statement at the
18 bottom?

19 MS. ORLER: No. To show the inconsistency
20 in the bookkeeping of Folsom Ridge and Big Island
21 Homeowners Association.

22 JUDGE STEARLEY: I'm not sure I understand,
23 Ms. Orler.

24 MS. ORLER: This is a document that says
25 that they -- they do not ratify the covenants and

1 conditions, yet they have actually ratified the covenants
2 and conditions and they are members, and this goes back to
3 the question of the inconsistency.

4 JUDGE STEARLEY: All right. They are not
5 here to testify to that fact, are they?

6 MS. ORLER: To testify to the fact that
7 they are --

8 JUDGE STEARLEY: The Kastens.

9 MS. ORLER: -- that they are members?

10 JUDGE STEARLEY: To whatever contradiction
11 you're attempting to demonstrate here.

12 MS. ORLER: I have the billing records that
13 Mr. Comley supplied that indicates that and substantiates
14 that.

15 MR. COMLEY: Again, I don't know how this
16 is going to be relevant to the issues in the case.
17 Inconsistencies in management and that kind of thing, I
18 don't know how that goes to the issues of whether or not
19 the companies are engaging in regulated public utility
20 service.

21 JUDGE STEARLEY: I'm going to sustain the
22 objection. It will not be received.

23 Exhibit 32, a letter looks like to Jeff
24 Welsh from a Mr. Gooding with an attachment of a
25 ratification of covenants and conditions, signed by the

1 Goodings. Ms. Orler, do you have any way to authenticate
2 this document?

3 MS. ORLER: Other than the records that
4 were supplied by Mr. Comley with regards to the
5 ratification.

6 MR. COMLEY: I don't think I -- are you
7 suggesting that I gave this record to you? I don't think
8 this is a record you got from my office. Is it?

9 MS. ORLER: No. My means of authenticating
10 would be based on the records that you supplied me, the
11 billing records.

12 MR. COMLEY: Oh, the billing records?

13 MS. ORLER: Yes, sir.

14 MR. COMLEY: Well, to make it clear, our
15 objection would be that this is a hearsay statement, and
16 there is no way to authenticate it without the person who
17 made it, and no way to cross-examine the Goodings on the
18 content of this statement.

19 JUDGE STEARLEY: I will sustain the
20 objection. It will not be received.

21 Exhibit 40, letter to Lisa Peterson, signed
22 by Reggie Golden, or purportedly signed by Reggie Golden.
23 Any way to authenticate this document, Ms. Orler?

24 MS. ORLER: Other than Mr. Rusaw being a
25 part of Folsom Ridge and this was a part of their tap

1 solicitation.

2 JUDGE STEARLEY: I'm not sure Mr. Rusaw can
3 testify as to the contents and verify the contents of this
4 letter since he didn't write it. Mr. Comley, I assume
5 your objection remains the same?

6 MR. COMLEY: Yes. We'll continue to object
7 to it because we don't -- we don't have a way of knowing
8 whether this is from the files of the company and -- or
9 whether this is -- we don't have a way of authenticating
10 it.

11 JUDGE STEARLEY: I will sustain. It will
12 not be received.

13 MR. COMLEY: I don't want to appear to be
14 obstreperous or -- what is the purpose that you wanted to
15 have this in? What was the reason that you wanted to have
16 that in?

17 MS. ORLER: Mr. Rusaw has provided
18 testimony that the escrow agreement was a useful tool in
19 collecting funds and monies for the tap purchases, and the
20 reason that I provided these documents was to indicate
21 that, while Mr. Rusaw has said it, that the escrow
22 agreement was a useful tool in collecting funds, there are
23 a number of documents here written by individuals that
24 indicate there were problems with the systems, there were
25 concerns with the obligations that were made to them by

1 Folsom Ridge that were not being upheld, and they were
2 concerned with the release of their funds to the utility
3 system with their obligations not being met and upheld by
4 Folsom Ridge.

5 MR. COMLEY: Our objection would stay the
6 same, Judge. I was trying to figure out a way perhaps we
7 could stipulate to a fact, but my objection to the
8 document would remain the same.

9 JUDGE STEARLEY: All right. And the
10 objection is sustained.

11 I have now Exhibit 41, which is a letter,
12 appears to be addressed to Reggie Golden and Charles
13 McElyea.

14 MS. HEINTZ: Your Honor, I think you ruled
15 this piece of evidence inadmissible prior.

16 MR. COMLEY: Yes. I think that was --

17 JUDGE STEARLEY: This is the one I ruled
18 on, that's correct.

19 MR. COMLEY: -- during the course of the
20 objections to Ms. Orler's testimony.

21 JUDGE STEARLEY: Thank you for reminding
22 me. I have Exhibit 42, letter to Mr. Schrader from
23 Charles McElyea. Any way to further authenticate this
24 document, Ms. Orler?

25 MR. MILLS: Your Honor, could I get you to

1 go back to Exhibit 41 for just one second? I note that
2 that was faxed to Folsom Ridge's fax number, although it
3 is addressed to Reggie Golden at Folsom Ridge. It
4 certainly is possible, if the fax number is anything like
5 our fax number, that anyone could have picked it up off
6 the fax, and I think it's certainly possible that
7 Mr. Rusaw has seen this and is familiar with it. And if
8 it's -- although it's addressed to Mr. Golden, it's also
9 addressed to Folsom Ridge, and Mr. Rusaw may know
10 something about it. It went to his fax number as well as
11 Mr. Golden's fax number.

12 JUDGE STEARLEY: I believe this is a letter
13 to Mr. Folsom at Folsom Ridge and says dear Reggie. So
14 I'm still going to sustain that objection.

15 Exhibit 42, Schrader letter.

16 MS. ORLER: Other than Mr. McElyea's
17 authentication, but you've already explained that to me
18 and I get it now, no.

19 JUDGE STEARLEY: All right. I will sustain
20 the objection. It will not be received.

21 Exhibit 45, Amended and Restated
22 Declaration of Covenants and Conditions.

23 MR. COMLEY: Your Honor, we would continue
24 to object to this. This is going to be in Mrs. Brunk's
25 testimony tomorrow, and it will be a clean copy, and I

1 think the clean copy -- we would object to any version of
2 this document which contains the commentary in the margins
3 of the Exhibit 45 that's been presented.

4 MS. ORLER: A clean copy's fine with me.

5 MR. COMLEY: I think to withdraw the
6 exhibit -- I think we would agree to withdraw the exhibit.

7 JUDGE STEARLEY: If you're going to offer a
8 clean copy of this into evidence?

9 MR. COMLEY: Yes, tomorrow.

10 JUDGE STEARLEY: Okay. In that case, I
11 will go ahead and sustain the objection on this and this
12 will not be received.

13 And Exhibit 46 I believe is our last one.

14 MR. COMLEY: Your Honor, we would object to
15 46 in its present form, but we're willing to give a clean
16 copy of the bylaws. We would happily produce that, and do
17 so as a late-filed exhibit.

18 MS. ORLER: This one is a clean copy.

19 MR. COMLEY: Either that or substitute it
20 for the one that Ms. Orler has presented. I haven't had a
21 chance to compare it with what she's supplied, but we have
22 no objection to producing for the Commission a copy of the
23 bylaws of the corporation.

24 JUDGE STEARLEY: All right. Is that
25 something you can do tomorrow as we continue on with the

1 case, or is that something we can file after hearing?

2 MR. COMLEY: I'm certainly going to try to
3 have that ready by tomorrow or Friday.

4 JUDGE STEARLEY: Okay. What I will do is
5 hold off ruling on this, and if the parties can examine
6 that clean copy and are all in agreement to it, we can
7 reoffer it later at that time.

8 As far as the remaining exhibits I have not
9 ruled on, I'm going to withhold ruling. Ms. Orler can
10 attempt to authenticate those documents during her
11 cross-examination of various witnesses. If they can be
12 authenticated, they will be received. If not, I will rule
13 on them at that time.

14 So at this point I don't believe,
15 Ms. Orler, you have any additional documentation you wish
16 to offer into evidence.

17 MS. ORLER: Other than if something comes
18 up during the course of a statement that I want to verify
19 or support.

20 JUDGE STEARLEY: Which would have to be in
21 the proper context of redirect or cross-examination.
22 All right. With that, Ms. Orler, I'm going to submit you
23 to cross-examination by the remainder of the parties, and
24 I believe we are beginning with OPC if I have my order
25 correct.

1 MR. MILLS: I have no cross-examination for
2 this witness.

3 JUDGE STEARLEY: Any cross-examination from
4 Staff?

5 MS. HEINTZ: No, thank you, your Honor.

6 JUDGE STEARLEY: Any cross-examination from
7 the 393 companies, Ms. Holstead?

8 MS. HOLSTEAD: Your Honor, I'm going to
9 waive cross-examination.

10 JUDGE STEARLEY: Any cross-examination from
11 Folsom Ridge and the Association?

12 MR. COMLEY: Yes, we do, your Honor. Thank
13 you.

14 JUDGE STEARLEY: Please proceed,
15 Mr. Comley.

16 CROSS-EXAMINATION BY MR. COMLEY:

17 Q. It may take me a minute or two, Ms. Orler,
18 to get organized again, but I think I'm close. I may have
19 to go between here and the boxes, but anyway, I feel I can
20 get started here.

21 Okay. I thought I'd start out with a few
22 questions about your qualifications. I want to first
23 confirm, it's true, isn't it, that you have never been
24 licensed as a wastewater operator with the Missouri
25 Department of Natural Resources?

1 A. That is true.

2 Q. And you have never been employed by the
3 Department of Natural Resources?

4 A. That is also true.

5 Q. You've never held a position of authority
6 with a homeowners association that operated or maintained
7 a water system or sewer system; is that correct?

8 A. No, sir. I mean, yes, sir, that is
9 correct.

10 Q. Is it true that you've not received
11 training in installation of water distribution pipes or
12 wastewater collection lines?

13 A. This is true.

14 Q. Is it true that you have not received
15 training in the installation, sizing, operation or
16 maintenance of wastewater treatment facilities?

17 A. That is also true.

18 Q. You have not received training in
19 installation of pumps or wells?

20 A. True.

21 Q. You have not been employed by any political
22 subdivision in a position that involved operation or
23 maintenance of a water system or sewer service?

24 A. True.

25 Q. You did attend college; is that correct?

1 A. Correct.

2 Q. Your degree program, it did not include
3 civil or structural engineering, did it?

4 A. No, sir.

5 Q. For that matter, it did not have anything
6 to do with any form of engineering; would that be a
7 correct statement?

8 A. Yes, sir.

9 Q. And you are not an engineer?

10 A. No, sir.

11 Q. You have had no training as a paralegal; is
12 that correct?

13 A. That is correct.

14 Q. You do not have a real estate broker's
15 license; is that correct?

16 A. Also correct.

17 Q. And you don't have a license to sell real
18 estate?

19 A. Correct.

20 Q. And you do not have a law degree; is that
21 correct?

22 A. I can verify that. I think that's been
23 evident.

24 Q. You have never operated or managed a
25 construction firm; is that correct?

1 A. Managed? I have, yes.

2 Q. A construction firm?

3 A. What do you term a construction firm? I

4 have --

5 Q. A general contracting firm that is involved

6 with I --

7 A. I have managed contractors and construction

8 workers.

9 Q. The contractors involved were not involved

10 in in wastewater construction, were they?

11 A. Part of their work entailed reconstructing

12 a mortuary preparation room, which did involve back flow

13 valves on the system there.

14 Q. And again, though, you have not worked in a

15 construction firm that was related specifically to

16 wastewater treatment; is that correct?

17 A. That is correct.

18 Q. You're not a plumber; is that correct?

19 A. No, I'm not a licensed plumber.

20 Q. All right. You have not had any experience

21 in property management; would that be a correct statement?

22 A. No. That's incorrect.

23 Q. You have managed property?

24 A. Yes, I have.

25 Q. Was that property of any large scale, like

1 an acreage of over 500 acres?

2 A. No, sir.

3 Q. Few questions about membership in the
4 association. You are not a member in the association; is
5 that correct?

6 A. That is correct.

7 Q. And you have not agreed to be bound by the
8 amended and restated covenants and conditions; is that
9 correct?

10 A. Yes.

11 Q. You would agree with me that the covenants
12 and conditions in the association bylaws are the source of
13 the rules and regulations for the water and sewer service
14 on the island; isn't that correct?

15 A. Yes, sir.

16 Q. Now, you have been given the opportunity to
17 join the Association; is that correct?

18 A. I was asked to ratify the documents.

19 Q. You were asked to join, weren't you?
20 Weren't you asked to join the Association?

21 A. I was asked to ratify the documents to join
22 the Association.

23 Q. Yes. And by ratifying the documents, you
24 would become a member of the Association; is that correct?

25 A. Yes.

1 Q. Okay. And I take it it was one of the
2 members of Folsom Ridge that invited you to become a
3 member of the Association?

4 A. In a letter from Mr. Golden, in a letter
5 from Mr. Rusaw, yes.

6 Q. Okay. Do you also get notices of the
7 Association membership meetings?

8 A. Some I have. Some I have not.

9 Q. But you're not on the mailing list for that
10 regularly, are you?

11 A. I don't know, because some I have received
12 and some I have not received. So I don't know how to
13 answer that question.

14 Q. So you get them irregularly, is that the
15 case?

16 A. Yes.

17 Q. I guess if you were on the membership list,
18 you would be getting them more regularly; would that be a
19 fair statement?

20 A. I don't know, because I can't answer their
21 bookkeeping practices or operations. I don't know.

22 Q. Are you saying that there are members that
23 don't get regular reports of the Association meetings and
24 notices of those meetings?

25 A. I don't know. I'm not a member.

1 Q. All right. It's my understanding that you
2 have access to the Association's budgets each year; is
3 that correct?

4 A. I don't know that they've been supplied
5 each year, but I do have access to several budgets that
6 have been supplied at meetings I've attended.

7 Q. Do you have a budget that was presented at
8 the 2005 meeting?

9 A. I'm sure that I do.

10 Q. And the 2006 meeting?

11 A. I'm sure that I do.

12 Q. And the 2004 meeting?

13 A. I'm sure that I do.

14 Q. The 2003 meeting?

15 A. I would have to check.

16 Q. So we know for sure that you've had access
17 to four years worth, three years worth of Association
18 budgets? 2003, 2004, 2005 and 2006, that's four years of
19 annual budgets; is that correct?

20 A. 2003, I think I answered I'm not quite
21 certain if I have that.

22 Q. Forgive me. 2004, 2005 and 2006, that's
23 three years?

24 A. (Witness nodded.)

25 Q. You have attended Association meetings,

1 haven't you?

2 A. Yes.

3 Q. You have never been told that the meetings
4 are restricted strictly to members of the Association,
5 have you?

6 A. No.

7 Q. You've never been turned aside at an
8 Association meeting, have you?

9 A. No, sir.

10 Q. And you've been given an opportunity to
11 speak at those meetings; is that correct?

12 A. Yes, sir.

13 Q. Isn't it true that you have also paid
14 invoices from the Association?

15 A. That is correct.

16 Q. Let me show you what's been marked
17 previously as Exhibit 43. Maybe you have a copy of that
18 in front you.

19 A. I do. Uh-huh.

20 Q. Can you tell the Commission -- can you just
21 identify this series of pages for the Commission, please?

22 A. You're talking about the ones that I have
23 the check in the center with the invoice behind?

24 Q. Yes. My Exhibit 43, the one that I
25 received has one, two, three, four, five pages, six pages

1 rather. The last page are copies of checks on the account
2 of Cathy Litty or Cathy or Jeff Litty.

3 A. Correct.

4 Q. And I'm presuming that you were formerly
5 known as Cathy Litty?

6 A. Yes, sir.

7 Q. What fees are you paying in this series of
8 invoices and with those checks?

9 A. I don't really know, other than I did make
10 a notation that I was not a member and not connected.

11 Q. What fees are set out on the invoice?

12 A. It says, Big Island HOA sewer fees, not
13 connected, first quarter, and that's for Invoice No. 36.
14 Invoice No. 128 says Big Island HOA sewer fees, not
15 connected, second quarter. Invoice No. 203 says Big
16 Island HOA sewer fees, not connected, third quarter. And
17 invoice No. 277 states Big Island HOA sewer fees, not
18 connected, fourth quarter.

19 Q. So irrespective of where they were
20 classified, you did pay the fees that were billed by the
21 Big Island Homeowners Association; isn't that correct?

22 A. Yes, sir.

23 Q. And as part of our testimony, part of the
24 testimony in this case, isn't it true that these accounts
25 are -- these amounts represent the maintenance or

1 availability fees that are charged by the Association?

2 A. No, that's not what the invoice is titled,
3 and we were -- again, I go back to the fact that for those
4 of us who purchased taps and are not connected but yet
5 have a reserved connection, there were not to be any fees
6 charged until the time that we connected. We were told by
7 Folsom Ridge if we didn't pay these fees that we would
8 forfeit our right to future connections.

9 Q. And you decided to go ahead and pay the
10 fees; is that correct?

11 A. I paid the fees along with a letter of
12 introduction stating that these --

13 MR. COMLEY: I'm going to object to the
14 answer and say it should be stricken. The answer can be
15 yes or not without explanation.

16 BY MR. COMLEY:

17 Q. You agreed to go ahead and pay the fees,
18 didn't you?

19 A. Out of fear of not being able to --

20 MR. COMLEY: I would ask that the answer be
21 stricken.

22 JUDGE STEARLEY: The objection will be
23 sustained as being nonresponsive. The testimony being
24 provided after an answer of either yes or no will be
25 stricken from the record. And I'm not quite clear, have

1 we got a yes or no answer yet, Ms. Orlor, to the question?

2 THE WITNESS: I paid the fees, yes, sir.

3 JUDGE STEARLEY: Okay. Thank you.

4 MR. COMLEY: I have an exhibit to mark.

5 JUDGE STEARLEY: I believe we're at
6 Exhibit 76.

7 MR. MILLS: Your Honor, while we're sort of
8 in a hiatus marking an exhibit, can I ask a procedural
9 question?

10 JUDGE STEARLEY: Certainly.

11 MR. MILLS: How will Ms. Orlor's redirect
12 be handled? The reason I ask is because the explanation
13 that she was attempting to give in response to the
14 question that Mr. Comley asked is the exact type of
15 question that would come out on redirect, and if Ms. Orlor
16 is going to be allowed to do redirect sort of as a
17 narrative on her own volition, then I don't know that it
18 matters whether she gives it in response to his question
19 or if she gives it in her narrative as redirect. That's
20 why I'm curious about how redirect will be conducted.

21 JUDGE STEARLEY: Redirect, I know we've got
22 a little bit unusual circumstances here, and I will allow
23 some narrative at that time. But while individual counsel
24 are asking questions, I expect, if I receive objections,
25 that they will be ruled upon as a matter of course at that

1 time.

2 MR. MILLS: So Ms. Orler should be making
3 notes on the kinds of questions she wants to answer for
4 herself on redirect; is that correct?

5 JUDGE STEARLEY: That would be your
6 suggestion, Mr. Mills, and I would not argue with that
7 suggestion.

8 (EXHIBIT NO. 76 WAS MARKED FOR
9 IDENTIFICATION BY THE REPORTER.)

10 BY MR. COMLEY:

11 Q. Ms. Orler, did you have a copy of
12 Exhibit 77 given to you by the court reporter?

13 JUDGE STEARLEY: I'm sorry, Mr. Comley. I
14 think I had this as 76.

15 MS. ORLER: Excuse me. Exhibit 76.

16 THE WITNESS: I was just handed one.

17 BY MR. COMLEY:

18 Q. Can you identify these documents for the
19 Commission?

20 A. Yes. Again, more invoices.

21 Q. And these are invoices directed to whom?

22 A. Jeffrey and Cathy Litty.

23 Q. And going through the exhibit, the first
24 invoice is for July 19th, 2001, first page?

25 A. Correct.

1 Q. Second page would be an invoice dated
2 June 27, 2001?

3 A. Correct.

4 Q. I think I got them out of order. The
5 invoice date for the third page is December 21st, 2001?

6 A. Correct.

7 Q. The fourth page is an invoice dated
8 April 1st, 2002?

9 A. Correct.

10 Q. The fifth page, an invoice for June 1st,
11 2002?

12 A. Uh-huh.

13 Q. Which may be a duplicate of an invoice in
14 Exhibit 43. Second to the last page is an invoice dated
15 August 1st, 2002?

16 A. Correct.

17 Q. And the final page is one dated
18 January 1st, 2003; is that correct?

19 A. Yes. That's correct. Uh-huh.

20 Q. Do you know how the fees that were charged
21 to you and Mr. Litty were first proposed by the
22 Association?

23 A. As I understand it, these were fees that
24 were voted on by the Association for those members of the
25 Association who were not connected.

1 Q. And did anyone in your household at that
2 time participate in the approval of this kind of fee
3 structure?

4 A. No, because we were not members.

5 Q. So Mr. Litty did not participate in any of
6 the details of agreeing upon these maintenance fees?

7 A. That is correct.

8 Q. Now, you do not pay these fees now; is that
9 correct?

10 A. That is correct.

11 Q. And I think the last time you had paid them
12 was what, 2004?

13 A. It was after we had hired attorneys to
14 represent us in this matter and we were advised that we
15 did not have to pay these fees.

16 Q. When did you stop paying the fees? Was it
17 2004?

18 A. I think it was prior to that. It was
19 after -- again, after we hired attorneys to represent us
20 in this matter and they said that we didn't have to pay
21 these fees, that our rights, our future rights to
22 connection to the facility were reserved without paying
23 these fees.

24 Q. But there's a record that you paid them for
25 almost two years; is that correct?

1 A. That is correct, yes.

2 Q. The tap fee, my understanding is that you
3 did not pay Folsom Ridge or the Association a tap fee for
4 connection; isn't that correct?

5 A. I'm not certain that I understand the
6 question. It was a part of the property purchase price.
7 I was purchasing my property at the same time the tap
8 solicitation was occurring by Folsom Ridge.

9 Q. But did you pay Folsom Ridge the tap fee?

10 A. Myself directly?

11 Q. Yes.

12 A. No, sir.

13 Q. That was paid by someone else?

14 A. The owner of the property, the seller.

15 Q. And what was that person's name?

16 A. Phillip Ruffin.

17 Q. So Mr. Ruffin was the one who paid Folsom
18 Ridge the tap fee pertaining to your residence; would that
19 be a correct statement?

20 A. I think so, yes, sir.

21 Q. And Mr. Ruffin paid Folsom Ridge the amount
22 of \$2,000 for a water tap; is that correct?

23 A. Yes, sir.

24 Q. And paid \$4,800 for a sewer tap?

25 A. Yes, sir.

1 Q. So I'm taking it, then, you and your
2 husband at the time were not party to the escrow agreement
3 that's referred to in the testimony; is that correct?

4 A. We were an indirect party. Mr. Ruffin
5 contacted us to let us know about the escrow agreement and
6 about the purchase of the taps and the monies that had
7 been deposited into the escrow agreement since we were
8 involved with the purchase of the property simultaneous to
9 that.

10 Q. So again, you and your husband were not a
11 party to that escrow arrangement or agreement, were you?

12 A. Indirectly, we were. We gave Mr. Ruffin
13 authority.

14 Q. Was it Mr. Ruffin who worked with Folsom
15 Ridge to pay the tap for both services?

16 A. Yes.

17 Q. And Mr. Litty at the time did not deal
18 directly with Folsom Ridge in connection with the water
19 taps or the sewer taps?

20 A. No. We dealt with Mr. Ruffin.

21 Q. Dealt with Mr. Ruffin, and he in turn dealt
22 with Folsom Ridge; is that correct?

23 A. But he was acting on our behalf.

24 Q. As far as the terms of the escrow
25 agreement, you have no direct knowledge of the terms of

1 how that worked; would that be a fair statement?

2 A. No, sir, because I did call Central Bank to
3 find out.

4 Q. You did not deal directly with Folsom Ridge
5 or with the Association in connection with the payment of
6 the tap fees; is that correct?

7 A. But I called Jeff Welsh at Central Bank to
8 find out the details of the escrow agreement.

9 Q. Aside from your talk with Central Bank, you
10 did not visit with anyone at Folsom Ridge about the
11 details of the payment of the tap fee or for the water or
12 sewer company; would that be a fair statement?

13 A. I did speak with Mr. Lees.

14 Q. In terms of the payment of the tap fee, the
15 tap fee was paid by Mr. Ruffin, and you did not make any
16 payment to Folsom Ridge or the Association in connection
17 with that tap fee; is that correct?

18 A. That is correct.

19 Q. Were you contacted about whether the amount
20 paid by Mr. Ruffin as a tap fee should be later paid to
21 Folsom Ridge?

22 A. Excuse me. I'm not understanding your
23 question.

24 Q. Were you ever contacted, say by a bank or
25 say by other parties, about whether the amount paid by

1 Mr. Ruffin for tap fees should be paid to Folsom Ridge?

2 A. No. I'm not clearly understanding your
3 question.

4 Q. Were you ever asked that you wanted the
5 fees for water and sewer returned to you?

6 A. No. Mr. Ruffin, in conversations with
7 Mr. Ruffin, as I indicated, was acting on our behalf. He
8 said that money had been deposited into the escrow account
9 at Central Bank for the water and sewer taps, and he asked
10 us if we wanted to proceed with that since we then would
11 be the new owners of the property. Does that answer your
12 question?

13 Q. Let me see if I can find something to help
14 you refresh your memory.

15 A. Yes.

16 Q. Ms. Orler, do you recognize that document?

17 A. Yes.

18 Q. You might explain for the Commission what
19 that document is.

20 A. This was a letter that I wrote to Folsom
21 Ridge, and it's regarding a letter that was mailed to
22 actually Mr. Phillip Ruffin, the former owner of our
23 property, and it said Mr. Ruffin forwarded this to us as.
24 We received this information with the deadline very near,
25 we want to use this letter to serve as our response. We

1 do not want money returned to us. We want the escrow
2 money released to Folsom Ridge as intended.

3 Q. You had no objection at that point to
4 release of the tap fees to Folsom Ridge; is that correct?

5 A. That is correct.

6 Q. And according to the arrangements you had
7 with Mr. Ruffin, this was according to the agreement that
8 he had reached with Folsom Ridge; is that correct?

9 A. Yes. And the agreement that we had reached
10 with Mr. Ruffin, yes. Uh-huh.

11 Q. And I presume that the escrow fee was paid
12 to Folsom Ridge, as far as you know?

13 A. As far as I know, yes.

14 Q. Let me talk to you about the settlement
15 agreement that's involved in the case. Ms. Brunk attached
16 a copy of the settlement agreement to her testimony, and I
17 understand that you are also familiar with its terms --

18 A. Yes.

19 Q. -- would that be a fair statement?

20 Did you have any contribution to the terms
21 of that settlement agreement?

22 A. Meaning any input or --

23 Q. Exactly.

24 A. No, sir.

25 Q. Did anyone from DNR contact you about what

1 it might provide?

2 A. No, sir.

3 Q. So the settlement agreement as far as you
4 know was negotiated strictly between DNR and Folsom Ridge
5 and the Association; is that correct?

6 A. Oh, absolutely, yes.

7 Q. Isn't it also true that this agreement has
8 been fully complied with?

9 A. That I cannot answer.

10 Q. Do you have any information to suggest
11 otherwise?

12 A. No. As a matter of fact, we've been trying
13 to get that information from DNR for several months now.

14 Q. And there was a deposition of DNR in this
15 case, wasn't there?

16 A. Yes, two.

17 Q. And you did not attend that deposition?

18 A. No. The first once I was iced in, and the
19 second one I could not attend.

20 Q. Isn't it true that the lines have been
21 relocated pursuant to the permits issued by DNR as part of
22 the agreement?

23 A. I don't know that, sir.

24 Q. Those lines were reinstalled as DNR
25 directive, weren't they?

1 A. I do not know that.

2 Q. Isn't it true that the civil penalty was
3 remitted to the appropriate party under the agreement?

4 A. I have a letter from Mr. McElyea where the
5 penalty was negotiated.

6 Q. Would you agree with me, Ms. Orler, that it
7 was a good management decision for Folsom Ridge to comply
8 with the settlement agreement?

9 A. Oh, yes.

10 Q. Isn't it also true that irrespective of the
11 location of the water and sewer lines as they were
12 initially installed, there were no incidents of cross
13 contamination in the lines?

14 A. I have no knowledge of that to verify one
15 way or the other.

16 Q. That's because you're not connected; isn't
17 that correct?

18 A. That is correct.

19 Q. You're not a connected customer to the
20 system at all?

21 A. That is correct.

22 Q. Neither system?

23 A. Correct.

24 Q. Wouldn't it have been a bad management
25 decision if Folsom Ridge ignored the settlement terms?

1 A. Yes.

2 Q. Let's talk about the present conditions of
3 the systems. Wouldn't you agree, Ms. Orlor, that the
4 systems have been operational since about the year 2000?

5 A. Actually, I think it was prior to that.

6 Q. So it's been more than seven years?

7 A. I think.

8 Q. Isn't it also true that many of the
9 households connected to the system are pleased with the
10 service?

11 A. I don't know that.

12 Q. There are more who are pleased than not;
13 isn't that correct?

14 A. I don't know that either.

15 Q. Even those you described as not ratifying
16 the covenants and conditions and conditions are still
17 connected to the systems; is that correct?

18 A. Restate your question, please.

19 Q. Even those you describe who have not
20 ratified the covenants and conditions have still stayed
21 connected to the system? Those who have not ratified but
22 who are connected, they haven't decided to disconnect,
23 have they?

24 A. I don't know of anyone.

25 Q. Would you dispute that Mr. McDuffey and

1 Lake Ozark Water and Sewer provide contract maintenance on
2 the systems and they also have an agreement to do that?

3 A. No, I don't dispute that.

4 Q. Would you agree with me that Mr. McDuffey
5 has considerable experience in that field?

6 A. Yes.

7 Q. His experience would, of course, exceed
8 your own; would that be fair?

9 A. Yes.

10 Q. If Mr. McDuffey were to tell the Commission
11 that complaints about the operations of the systems have
12 been very few, would you have any reason to doubt him?

13 A. Yes.

14 Q. Complaints officially go to Mr. McDuffey;
15 is that correct?

16 A. No. I have no knowledge of a procedure in
17 place that directs -- that complaints are directed to
18 Mr. McDuffey.

19 Q. That's because you are not connected; isn't
20 that correct?

21 A. No, not necessarily.

22 Q. You really wouldn't know the procedures
23 because you haven't connected; wouldn't that be a fair
24 statement?

25 A. No.

1 Q. You've never had to use them because you're
2 not connected to the system; isn't that correct?

3 A. I'm not connected to the system, that is
4 correct.

5 Q. You would have no way of knowing yourself
6 whether or not service to your home would be safe,
7 adequate or inadequate; is that correct?

8 A. No. I disagree with that.

9 Q. The service to your home is inadequate?

10 A. I have no service to my home.

11 Q. You have not been involved --

12 A. From a central facility.

13 Q. You have not been involved in the
14 day-to-day administration of that system at all, have you?

15 A. Not in its administration, no.

16 Q. Would you agree with me that after the
17 lines were relocated per the requirements of the
18 settlement agreement, the systems are in complete
19 compliance with the rules and regulations of the
20 Department of Natural Resources?

21 A. No, I would not agree with you.

22 Q. Would you agree with me, Ms. Orler, that
23 the presence of a centralized sewer system and water
24 distribution system have provided benefits for the area?

25 A. Yes.

1 Q. As well as for the Lake of the Ozarks?

2 A. Yes.

3 Q. If DNR itself were to state to the
4 Commission and to you that the systems comply with its
5 rules and regulations at this time, would you take its
6 word for it?

7 A. No, I would not.

8 Q. If the Commission approves the application
9 to transfer the assets to the nonprofit companies, when do
10 you intend to connect to either system?

11 A. I have no future -- immediate future plans
12 of connecting to the system.

13 Q. Would it be fair to say that you don't
14 intend to connect at all?

15 A. No, I don't think so.

16 Q. Isn't it true that no matter what happens,
17 you probably won't connect?

18 A. No.

19 Q. You recently installed a new septic tank,
20 didn't you?

21 A. Yes, sir, I did.

22 Q. Instead of making use of the connection you
23 already have, you decided to go ahead and pay for a new
24 septic tank; is that correct?

25 A. Regardless of what type of connection I

1 had, I would have to have a new septic tank.

2 Q. Are you familiar with the specifications
3 for the septic tanks that would be required to connect to
4 the new centralized wastewater system at Big Island?

5 A. Yes, sir, I am.

6 Q. Those specifications are attached to
7 Mr. McDuffey's testimony. Have you seen those?

8 A. Yes, and I was aware of them prior to that.

9 Q. And it's true, isn't it, that you did not
10 purchase a septic tank that would conform to those
11 specifications?

12 A. No. That is incorrect.

13 Q. You bought one that had a pump for it?

14 A. No, I did not.

15 Q. Did you buy one that had a double chamber?

16 A. Yes, sir.

17 Q. Did you buy one that was going to be
18 sufficiently sized and able for maintenance and that kind
19 of thing --

20 A. Yes, sir.

21 Q. -- for industry specifications?

22 A. Yes, sir, I did.

23 Q. The useful life of that tank is indefinite,
24 isn't it?

25 A. Yes.

1 Q. I have a few questions about the
2 application that we have, and that would be -- you
3 understand the bylaws proposed by the new companies, I'm
4 talking about the Section 393 companies, that voting will
5 not be done a per lot basis?

6 A. Yes, sir.

7 Q. That had been one of your objections to the
8 Association's voting system, hadn't it?

9 A. Yes, sir.

10 Q. Isn't it true that, as proposed, the bylaws
11 will give a vote to Folsom Ridge but it won't be based on
12 its lot ownership; is that correct?

13 A. Yes, sir.

14 Q. Would you agree with me that's a fair way
15 of voting?

16 A. No, sir.

17 Q. You see no problem with -- you see a
18 problem with that kind of voting as well?

19 A. It is based on one vote per customer, and
20 because Folsom Ridge has multiple connections, has
21 multiple customers, there are also employees of Folsom
22 Ridge who are connected who have a vote, it would be my
23 opinion that Folsom Ridge employees would probably vote
24 Folsom Ridge's way of thinking.

25 Q. And aren't they entitled to a vote?

1 A. Yes, sir.

2 Q. And they would be entitled to make their
3 own mind up about how they would vote?

4 A. True.

5 Q. And if their best interests were for a vote
6 in one way or the other, they would be inclined to vote
7 that way, wouldn't they?

8 MR. MILLS: I object. That calls for
9 speculation. We don't even known know who we're talking
10 about much less how they would vote.

11 JUDGE STEARLEY: I would sustain that.

12 BY MR. COMLEY:

13 Q. Do you believe that people should not be
14 entitled to vote in Section 393 companies because they may
15 be affiliated with a local developer?

16 A. No, sir.

17 Q. You understand that the systems will be
18 owned and operated by your neighbors?

19 A. Right.

20 Q. You understand that? If you become a
21 member, then you could participate in that body, even
22 vote; isn't that correct?

23 A. Yes.

24 Q. And if you dislike the way it's managed,
25 you could vote to change it; isn't that correct?

1 A. You could vote. I don't know what the net
2 result or end result or objective would be to that vote.

3 Q. You would still have a vote, wouldn't you?

4 A. Yes.

5 Q. And the vote would be based on you as a
6 customer and not you as a lot owner; is that correct?

7 A. Yes.

8 Q. So would you go this far with me and agree
9 that by taking away the one lot one vote rule, your vote
10 in the Section 393 companies would be more fair, in your
11 opinion?

12 A. More fair, yes.

13 Q. You understand that the rates for service
14 would be set by local residents, correct?

15 A. Yes.

16 Q. Now, would you agree with me that local
17 residents would be trying to keep the rates as low as
18 possible and still maintain adequate service?

19 A. My answer to that question would be low
20 rates are not synonymous with adequate service in every
21 instance.

22 Q. And wouldn't you agree, though, that they
23 would try their darnedest to keep them low enough and
24 still maintain adequate service? That would be in their
25 interest, wouldn't it?

1 A. Low rates would be in their interests, but
2 again I restate my earlier answer that low rates are not
3 always synonymous with adequate service.

4 Q. Would you agree with me that local
5 residents would want services at a high standard in order
6 to protect the value of their property?

7 A. Not necessarily.

8 Q. They would set rates and do it at low
9 standards in order to devalue their property, is that what
10 you're saying?

11 A. I don't think that their objective would be
12 to devalue their property.

13 Q. Their motivation would be to make sure that
14 they keep a high standard of service so that the valuation
15 of their property would be at its highest; wouldn't that
16 be true?

17 A. I can't speak to anyone else's motivation
18 on how they would vote. Is that what you're asking me?

19 Q. I would presume that if you were in a
20 position of trying to set rates, you would try to set the
21 rates to cover the costs and also make sure that service
22 was adequate, wouldn't you?

23 A. Yes.

24 Q. And wouldn't you want to try to set those
25 rates so that the value of your property and your

1 neighbors' was going to stay at the highest value?

2 A. Again, the rate structure to equate to
3 merely adequate service doesn't also equate to property
4 value increase. Is that what you're asking?

5 Q. Would you want to make sure that the rates
6 for service were adequate enough to cover the costs and to
7 maintain a high standard of service?

8 A. A high standard of service, I would agree
9 with.

10 Q. Certainly. And by doing so, you would be
11 protecting your property values in the area; isn't that
12 correct?

13 A. I think that property values should not be
14 dependent, contingent or dictated by the success or lack
15 of success of the utility.

16 Q. Whether you like that or not, wouldn't the
17 existence of the wastewater and water facilities on that
18 island be important to decisions about purchases of
19 property there?

20 A. Yes, that I would agree with.

21 Q. You understand that extension to the system
22 under the proposal that we have in the application will be
23 at the developer's expense? Do you understand that?

24 A. Yes.

25 Q. And that was a concern of yours, wasn't it,

1 that there would be somehow some costs that subscribers to
2 service would be paying for extensions to other portions
3 of the island? Wasn't that a concern of yours?

4 A. It's still a concern because of the way the
5 bylaws for the 393 companies read, there are still some
6 items that are unclear and not specific with regards to
7 some of those extensions.

8 Q. But it's clear enough, isn't it, that all
9 of the extensions and the improvements are going to be
10 paid for by the developer under this proposal; isn't that
11 correct?

12 A. No. I don't want to agree to that, no.

13 Q. Well, I will tell you, that's what the
14 agreement is. If that's the agreement, that will satisfy
15 your concerns, wouldn't it?

16 A. I would have to read the agreement to see
17 the language in the agreement.

18 Q. I'm telling the Commission, I'm telling
19 Judge Stearley and Commissioner Appling right here, that
20 is the deal in the agreement. The developer pays for all
21 improvements and extensions to the water and sewer system.
22 That's the deal. Does that satisfy your objection?

23 A. My objection to?

24 Q. The application --

25 A. No.

1 Q. -- on the ground of extension.

2 A. No.

3 Q. Your concern was with the cost of extending
4 the system may be passed on to customers with service.
5 Wasn't that your concern?

6 A. There are many concerns, Mr. Comley.

7 Q. Wasn't that one concern that you had about
8 that, the extensions would somehow be passed on to new
9 customers? Maybe I've got it wrong. Maybe you have no
10 objection to that. If that's the case, we'll go on. But
11 my understanding was you had an objection to the idea that
12 customers for service would have to pay for extensions of
13 these systems. Is that a correct understanding of your
14 testimony?

15 A. No, I don't think so.

16 Q. You have no objection, then, to having
17 subscribers of service pay for the extensions? If that's
18 the case, then we might change our agreement.

19 A. Well, you're talking about two separate
20 sets of people when you say subscribers. We have existing
21 residents and --

22 Q. What is your objection? Tell me what your
23 objection was. I don't want to hear about two different
24 kind of subscribers to service. Excuse me. My idea was
25 that you objected to the idea that the developer was not

1 going to be the sole source of payment for extensions to
2 the system. Maybe that's a fair way of saying your
3 testimony. Is it?

4 A. No, sir. I think you're incorrect on that.

5 Q. What is your objection?

6 A. To the 393 companies or to the extension?

7 Q. We're talking about your concern about the
8 costs of extensions to the system in the future.

9 A. You are telling me that the developer will
10 bear the cost of all future extensions to the utility, and
11 I'm not objecting to that.

12 Q. Your objection was that it was going to
13 be -- it could have possibly been passed on to other users
14 or other property owners in the area; would that be a fair
15 statement?

16 A. No, sir.

17 Q. You had no objection then to passing the
18 costs on to other people?

19 A. What I'm trying to explain is passing the
20 cost on to future users who will be solely benefiting from
21 the extensions and having those costs beared by current
22 users who have already paid but not benefit from the
23 future extensions.

24 Q. Well, then wouldn't this satisfy that
25 concern? The developer is going to be paying for the

1 whole cost of the extension. There won't be any kind of
2 movement or shift in liability or shift in movement of
3 money between subscribers or future subscribers. Wouldn't
4 that satisfy your concern?

5 A. Yes.

6 Q. In your opening statement you said that as
7 a consequence of the approval of the application in this
8 case, you would have to file suit against the companies.
9 Was that a fair statement that you -- fair understanding
10 of what you said today?

11 A. Yes. Are you talking about me personally?

12 Q. Yes.

13 A. Yes.

14 Q. But it's true, isn't it, you've already
15 filed suit?

16 A. Yes.

17 Q. And that was what was in Exhibit 36?

18 A. Yes. That's -- yes.

19 Q. So it's true you've already filed suit
20 against the Big Island -- the new companies that have been
21 created here?

22 A. As well as Folsom Ridge, as well as Big
23 Island Homeowners Association.

24 Q. And you Mr. Pugh and his wife, Cindy
25 Fortney, other people that are named in this, they're all

1 homeowners in the area; is that correct?

2 A. Yes. We filed a claim against the assets.

3 Q. I think the Petition will speak for itself,
4 and there is no claim against the assets in there. There
5 are no claims against the assets in this Petition; isn't
6 that correct?

7 A. It was my understanding that what we filed
8 was a claim against the assets because we have monies that
9 were paid to Folsom Ridge, and those monies were used for
10 the construction of the utility. And with the transfer of
11 assets to the 393 companies, the service that we were to
12 receive will no longer be obligated by Folsom Ridge.

13 Q. I guess that's the other part of this. Do
14 you realize that the Section 393 companies have guaranteed
15 your right to connect?

16 A. Oh, yes, sir.

17 Q. So since you have a guaranteed right to
18 connect, there really is no need for the lawsuit, is
19 there?

20 A. No, sir. You're incorrect on that.

21 Q. You have a concern about whether there's
22 liability insurance for the new companies associated with
23 your litigation; is that correct?

24 A. In one of my testimonies I asked if the 393
25 companies would have the ability to obtain liability

1 insurance now that this Petition had been filed.

2 Q. So without liability insurance, you're
3 going to try to make it difficult for the Big Island
4 companies to pay a judgment; is that correct?

5 A. No, because I don't know whether they have
6 liability insurance or not.

7 Q. Did you file your suit in order to create
8 liabilities for the new companies?

9 A. No, sir. I did it in a manner to protect
10 myself.

11 Q. And you were protected already by the
12 bylaws of the company; isn't that correct?

13 A. No, sir.

14 Q. The bylaws of the company says you are
15 guaranteed the right to connect. Aren't you protected by
16 the bylaws?

17 A. I would be if I were a member of the 393.

18 Q. If you become a member of the 393, you'd be
19 granted a guaranteed right to connect; isn't that correct?

20 A. That is my understanding as per the bylaws.

21 Q. And pursuant to that you would be protected
22 to get a guaranteed connection; isn't that correct?

23 A. My understanding is yes.

24 Q. If you have a concern that the rates may
25 need to be adjusted to pay your judgment in the

1 litigation, why don't you dismiss it?

2 A. Because I'm not talking about my rates. I
3 am not a member.

4 Q. You're talking about the rates other people
5 pay that are connected; isn't that correct?

6 A. Some way, somehow the cost of litigation
7 what to be paid, either through an increased fee structure
8 or special assessments, I would assume.

9 Q. So you're not concerned about increasing
10 the rates of the 393 companies because of your lawsuit; is
11 that correct?

12 A. Ms. Holstead has said that they would deal
13 with that.

14 Q. But you're not concerned about that, are
15 you?

16 A. I think it should be a concern of the 393
17 companies, yes.

18 Q. You're not concerned about increasing the
19 rates for the people that are connected because of your
20 lawsuit; is that correct?

21 A. I think it's unfortunate.

22 Q. Besides being unfortunate, you don't have a
23 concern about the rates being raised for the people who
24 are connected because of your lawsuit; is that correct?

25 A. I think it's a part of doing business.

1 MR. COMLEY: I would ask the Court to
2 direct Ms. Orler to answer my question.

3 JUDGE STEARLEY: Mr. Comley, would you
4 please repeat your question to Ms. Orler?

5 BY MR. COMLEY:

6 Q. You have no concern about increasing the
7 rates of the residents that are connected to the system
8 because of your lawsuit; isn't that correct.

9 MR. MILLS: I object because that's been
10 asked and answered. She said that she believes it's
11 unfortunate and it's the cost of doing business.

12 MR. COMLEY: The answer was not whether
13 it's fortunate or not. The answer is whether she's
14 concerned about it.

15 JUDGE STEARLEY: Ms. Orler, I will direct
16 you to answer the question. If you need it repeated
17 again, Mr. Comley can read it to you again or I can have
18 the court reporter read it back to you.

19 THE WITNESS: Since I consider it to be
20 unfortunate, obviously it is a concern.

21 BY MR. COMLEY:

22 Q. If it's such a concern, why did you file
23 the lawsuit?

24 A. To protect myself.

25 Q. But you do have a concern that it's going

1 to raise the rates of your residents that are connected,
2 is that what you're telling me, that you do have a concern
3 that this is going to raise the rates of the other people
4 that are connected to the system?

5 MR. MILLS: Now, that's an argumentative
6 question, and I object on that basis.

7 MR. COMLEY: I'm asking what her testimony
8 is. I'm not trying to argue with the witness, but there
9 have been conflicting parts of her testimony that we're
10 just trying to clarify.

11 BY MR. COMLEY:

12 Q. What is your concern? Are you concerned
13 that you're raising the rates of the residents because of
14 your lawsuit? Is that your testimony?

15 JUDGE STEARLEY: Since Mr. Comley has
16 rephrased, I'll not rule on that objection.

17 MR. MILLS: I withdraw my objection.

18 THE WITNESS: Yes.

19 BY MR. COMLEY:

20 Q. If you're that concerned that they are
21 going to be increased, why is the lawsuit continuing?

22 A. Is there certainty that the rates will be
23 increased?

24 Q. That's a question, not an answer.

25 JUDGE STEARLEY: Please answer the

1 question, Ms. Orlor.

2 THE WITNESS: And what was your question
3 again?

4 MR. COMLEY: Kellene, could you read that
5 question back.

6 THE REPORTER: "Question: If you're that
7 concerned that they are going to be increased, why is the
8 lawsuit continuing?"

9 THE WITNESS: I'm more concerned about
10 protecting myself and my property rights and my claims
11 against the assets.

12 BY MR. COMLEY:

13 Q. I can't find it in my notes, but you
14 mentioned something in your testimony about the number of
15 households who have not paid a tap fee but who have
16 facilities that they could connect to.

17 Do you object to the idea that those
18 individuals will pay a tap fee in the amount Mr. Ruffin
19 paid in order to connect to the system?

20 A. And what was your question?

21 Q. Would you object to the idea that the
22 people who have not paid a tap fee but who have facilities
23 that they could connect to, that those will pay a tap fee
24 to the 393 companies in an amount your predecessor
25 Mr. Ruffin paid in order to connect to the water and sewer

1 systems?

2 A. Yes.

3 Q. You would want them to pay something more?

4 A. I don't think that the Staff has yet
5 established specifically what that rate would be, but so
6 far in these proceedings it's been established that that
7 rate has been too much, and there is the resulting CIAC
8 refund that is due.

9 Q. Let's put aside the Staff recommendation in
10 the other case. Let's put that aside and say that the tap
11 fee is going to be \$2,000 for water and \$4,800 for sewer,
12 just like you -- Mr. Ruffin paid in 1999 or 1998. Let's
13 say that that's going to be the case. If that's the case,
14 do you object to those people paying the same rate that
15 you did to tap on to the system?

16 A. Yes, I do, if it's not an adequately
17 structured rate.

18 Q. It's the same rate that you paid. At that
19 time it would be the rate that was paid to get on. Do you
20 want them to pay less?

21 A. Just because I paid it does not mean it's
22 an adequately structured rate.

23 Q. So you would agree with an idea of allowing
24 people to pay less to connect to the system than you did?

25 A. If it was an adequately structured rate

1 that was determined by an appropriate rate base, yes.

2 Q. What if that's not going to be done? What
3 if there won't be any rate base analysis of Staff in this
4 case about that tap fee, do you object to the idea
5 somebody like I've just described to you paying the same
6 tap fee you did?

7 A. Yes, if there's no basis for its structure.

8 Q. Do you have your direct testimony? On
9 page 16, I want you to go with me. On page 16, it's line
10 16 on page 16, you refer to correct utility issues in that
11 line. You say that the 393s have no desire or intent to
12 correct the utility issues. Can you tell me what issues
13 you're referring to?

14 A. I'm referring to the fact that there are
15 currently water and sewer in the same trench. I'm
16 referring to the issue of the system as a whole with no
17 guarantee of its proper installation. I am referring to
18 the issues of rate structure. I am referring to the
19 issues of management. And I am referring to the issues
20 that are currently before the Commission as a part of the
21 regulation within the jurisdiction of the PSC for this
22 utility.

23 Q. Let's talk about the fact that you say that
24 there are water and sewer lines in the same trench. The
25 fact that those water -- that water and sewer lines are

1 now no longer in the same trench, are relocated at a
2 distance that's acceptable to DNR, you're not willing to
3 accept DNR's statement that that has been successfully
4 rectified, is that your testimony?

5 MR. MILLS: I object to the form of the
6 question. It assumes facts not in evidence. There's no
7 evidence yet that those lines are not in the same trench.

8 BY MR. COMLEY:

9 Q. Let's presume that DNR has said that the
10 construction of the relocation of those lines is
11 satisfactory and meets all DNR regulations.

12 JUDGE STEARLEY: It is being rephrased as a
13 hypothetical.

14 MR. MILLS: Thank you.

15 BY MR. COMLEY:

16 Q. Is it your testimony that that's still a
17 concern to you if that turns out to be accurate?

18 A. Yes, sir.

19 Q. It's still a concern with you even though
20 DNR, we assume DNR has approved the construction?

21 A. Yes.

22 Q. You talk about a guarantee. The guarantee
23 you're looking for is a guarantee that will warrant the
24 systems indefinitely; is that correct?

25 A. Not indefinitely, no, sir.

1 Q. The warranty that you want would be
2 definite in term; is that correct?

3 A. I think some type of warranty is necessary
4 either from DNR or Folsom Ridge or both.

5 Q. Would you accept a warranty of five years?

6 A. I think that that would be helpful.

7 Q. Would you accept a warranty of two years?

8 A. No, sir.

9 Q. So it's between two and five; is that
10 correct?

11 A. No, sir, because it would depend on what
12 the warranty would state, the language of the warranty and
13 what it would encompass.

14 Q. A warranty on the material and workmanship,
15 how's that?

16 A. No. I think it would have to include the
17 language of a warranty against construction deficits.

18 Q. I think that's what I just said. Let's
19 presume that's what it is. If you have a warranty on
20 quality of workmanship for five years?

21 A. I think it would also need to be
22 substantiated by a bonded amount equal to the value of the
23 facility, and then that bonded amount being signed
24 personally by Mr. Rusaw and Mr. Golden.

25 Q. So you'd want a bond of what, \$750,000, is

1 that what you're talking about?

2 A. I think in the feasibility study, 753,000
3 was the value of the facility.

4 Q. And you'd want a five-year warranty with
5 that bond behind it?

6 A. And personally guaranteed with personal
7 signatures.

8 Q. And that's the kind of guarantee you'd
9 want; is that correct?

10 A. I think that would be very helpful in this
11 case, yes, sir.

12 MR. COMLEY: I think I'm getting close to
13 an end, but I wanted to visit with Mr. McElyea a minute.

14 JUDGE STEARLEY: Please do.

15 MR. COMLEY: No other questions.

16 JUDGE STEARLEY: All right. Before we pick
17 up with questions from the Bench, recross and redirect, we
18 will take a short ten-minute break at this time.

19 (A BREAK WAS TAKEN.)

20 JUDGE STEARLEY: We are back on the record.

21 MR. COMLEY: Your Honor, before I leave the
22 podium once more, I would like to offer Exhibit 76 into
23 the record. This was the document that Ms. Orler
24 identified during her cross-examination, and it is
25 somewhat of a complement to Exhibit 43 as I recall.

1 JUDGE STEARLEY: Are there any objections
2 to the offering of Exhibit 76?

3 MR. MILLS: May I ask a couple of
4 clarifying questions?

5 JUDGE STEARLEY: Certainly.

6 VOIR DIRE EXAMINATION BY MR. MILLS:

7 Q. Ms. Orler, I think each one of these pages
8 that comprise Exhibit 76 there are handwritten notations.
9 Are those your notations?

10 A. Yes, sir.

11 Q. When were they put on these invoices? Were
12 they put on before you returned them with your payment?

13 A. Yes, sir.

14 MR. MILLS: I have no objection.

15 JUDGE STEARLEY: Any other objections or
16 questions for clarification?

17 MR. TEMARES: I've got a question with
18 regard to clarification.

19 JUDGE STEARLEY: With regard to this
20 exhibit?

21 MR. TEMARES: No. The little discussion we
22 had before.

23 JUDGE STEARLEY: I want to rule on this
24 exhibit first, Mr. Temares, and then I will answer your
25 question. Hearing no objections, this Exhibit 76 will be

1 received into evidence.

2 (EXHIBIT NO. 76 WAS RECEIVED INTO
3 EVIDENCE.)

4 JUDGE STEARLEY: Now, Mr. Temares, if you
5 will please redirect your question to me.

6 MR. TEMARES: As I was asking you shortly
7 while we was on break if it was possible for one of the
8 Complainants to question Ms. Orlor or ask her any
9 questions, and you said you felt it was a -- because it
10 would be a friendly, I guess, question, that would not be
11 accepted by the Court.

12 JUDGE STEARLEY: Well, what I stated was
13 the Commission does not as a matter of policy allow
14 friendly cross-examination. The witness list, order of
15 cross was established by order that was issued yesterday,
16 and the Complainants were not listed as being able to
17 cross-examine each other.

18 Now, if you have a specific question or
19 two, I could ask the other parties if they would have any
20 objection to Mr. Temares conducting some cross-examination
21 of Ms. Orlor since that is not the way we have our current
22 order of cross-examination as adopted.

23 MR. MILLS: I have no objection.

24 MS. HEINTZ: Staff has no objection.

25 MR. COMLEY: What is he proposing? I'm

1 sorry.

2 JUDGE STEARLEY: Mr. Temares, who is also
3 one of the Complainants in this action, although he has
4 not been listed in the adopted order of cross-examination
5 is asking if he can ask a couple of questions in
6 cross-examination of Ms. Orler.

7 MR. COMLEY: I would reserve the right to
8 object depending upon the question, of course, but I have
9 no objection of him asking questions.

10 JUDGE STEARLEY: So noted. 393 companies,
11 any objection?

12 MS. HOLSTEAD: No objection, your Honor.

13 JUDGE STEARLEY: Mr. Temares, you may come
14 to the podium and ask your questions.

15 MR. TEMARES: I'd like to say thank you and
16 appreciate the opportunity to let me do this.

17 CROSS-EXAMINATION BY MR. TEMARES:

18 Q. I just wanted to ask you, Cathy --

19 JUDGE STEARLEY: Before you continue, would
20 you please speak very clearly into the microphone? It
21 helps with our recording.

22 MR. TEMARES: I'm sorry.

23 JUDGE STEARLEY: Thank you.

24 BY MR. TEMARES:

25 Q. Cathy, I'd like to find out what your

1 understanding of the rate increase with the PSC and a
2 certified Folsom Ridge managing the water and sewer versus
3 the 393's supposed 40 percent increase that they're
4 predicting the increase would be, what towards the -- how
5 many I guess to term this liabilities would be with the
6 393 versus the PSC governing the certificated company?

7 A. My understanding is that with the PSC
8 regulating the utility, there is a fee charged by the PSC
9 for its regulation, and that is an average cost of
10 2 percent for water and 7 and a half percent for sewer.
11 There is also allowed -- and this figure comes from the
12 feasibility study that was provided in the application
13 case. Folsom Ridge was allowed to earn a profit then of 9
14 percent.

15 In my opinion, that rate structure for an
16 increase of fees with regards to the cost of regulation
17 being approximately 9 percent or 9 and a half percent, the
18 9 percent that would be allowed for Folsom Ridge as a
19 profit would total about an 18 to 18 and a half percent
20 rate increase to whatever the fee structure or rate
21 structure might be for PSC versus the rate structure with
22 the 393 companies that there really hasn't been any basis
23 provided to confirm a true cost of service. And in my
24 opinion, the regulated utility I do not have ownership in,
25 nor do I have liabilities associated with the ownership of

1 the utility, but with the 393 companies, I would.

2 Was that your question, Mr. Temares?

3 Q. Yes, ma'am. So you feel like the
4 liabilities and responsibilities of the water and sewer
5 with a PSC governed certificated company would be much
6 better to fit the residents on Big Island?

7 A. Yes, sir, with no doubt.

8 MR. TEMARES: Okay. Thank you. That's
9 all.

10 JUDGE STEARLEY: Thank you, Mr. Temares.
11 Well, we have no Commissioners, so there are no questions
12 from the Commissioners and I have no -- Mr. Hughes -- or
13 Pugh. I'm sorry. I keep saying that. Pugh. I'm having
14 a synapse.

15 MR. PUGH: I don't have a question, but
16 something in Mr. Comley's questioning Ms. Orler about the
17 times when she's been to the annual meetings, and I think
18 if my memory's correct, in 2004 we didn't have a meeting.
19 We didn't have an annual meeting.

20 MS. HEINTZ: Judge, this is not --

21 JUDGE STEARLEY: I'm going to stop you at
22 this time. You are giving what constitutes testimony, and
23 I'm going to order that your past statements will be
24 stricken from the record.

25 MR. PUGH: Very good.

1 JUDGE STEARLEY: As I said, there are no
2 questions from the Commissioners, and I have no questions
3 for Ms. Orlor. So I'm taking it there will be no recross
4 based upon the fact that we have no questions from the
5 Bench, which brings us to redirect.

6 Ms. Orlor, as redirect, you have the
7 opportunity to provide additional testimony addressing
8 only those matters that were raised in the
9 cross-examination. You may not supplement your direct
10 testimony. So if you have any other testimony you would
11 like now to offer regarding your cross-examination, you
12 may do so.

13 MS. ORLER: If I step out of bounds, I'm
14 sure someone will let me know.

15 JUDGE STEARLEY: That's generally the way
16 things work.

17 MS. ORLER: With regards to the billing
18 statements and invoices that were presented as a part of
19 my direct, is that correct, I paid the fees because at the
20 time we were told by Folsom Ridge if these monthly fees
21 were not paid, we would forfeit all future rights to
22 connect to the system. This was in and around the time
23 that we as concerned residents on Big Island were also
24 hiring attorneys to find out whether or not this could be
25 the case.

1 After the legal opinions were rendered by
2 the attorneys that, no, we did not have to pay the fees to
3 insure our future rights to connect to the system since we
4 were not members, not connected and not receiving any
5 service, that we could not be forced to pay the fees, and
6 at that time I no longer paid any fees.

7 With regards to Mr. Comley's questions
8 concerning my concerns about future litigation and how it
9 might impact any future utility rate structure for the
10 393, I do feel it's unfortunate; however, I did inform
11 Ms. Holstead personally both in writing and verbally of my
12 objection to the 393 companies and my reasons for that.
13 I've also been very honest about fully disclosing that to
14 the Commission in my testimonies.

15 I do feel it's unfortunate, but I also
16 filed the petition as one of the plaintiffs to protect
17 myself and my assets and my concerns with the liabilities
18 that come with the ownership of the utility through the
19 imposed membership of the 393 companies.

20 JUDGE STEARLEY: Do you have anything
21 further to add at this time?

22 MS. ORLER: Yes. Mr. Comley also went
23 into, I guess, a fair amount of detail with regards to the
24 future cost of tap purchases, and I think, Mr. Comley,
25 would I be fair in saying that I seemed surprised?

1 JUDGE STEARLEY: Excuse me, Ms. Orler. You
2 are not allowed to ask questions.

3 MS. ORLER: Okay. My perception was that
4 Mr. Comley seemed surprised with my saying that I would
5 not be upset or wouldn't mind if future utility customers
6 paid a lesser amount in tap fees than what I did. The
7 reason for that, that is the very reason we are here
8 before the PSC.

9 There needs to be some established rate
10 structure, management and operation of this utility. You
11 just cannot go out and arbitrarily pull figures out of
12 your hat, and just because the \$4,800 and \$2,000 was paid
13 in the past doesn't mean that it was a correct assessment,
14 and I think that the Staff report and testimonies have
15 already concluded that.

16 So we do need to have standards. We do
17 need to have rates that are based on something, and they
18 need to be proportionate to the cost of service. They
19 also need to be proportionate to a reserve, capital
20 reserve that would be adequate enough to cover any
21 emergency expenditures, any routine maintenance
22 expenditures, any unforeseen expenditures.

23 So just to continue charging the same rate
24 simply because it's been the same rate that's been charged
25 in the past, I do have very much a problem with. That's

1 all I have to add.

2 JUDGE STEARLEY: All right. Ms. Orler, we
3 appreciate your testimony. At this time you may step
4 down, but let me advise you, you are not being fully
5 excused as a witness. You may be recalled by the
6 Commissioners throughout the remainder of this proceedings
7 if they should have additional questions for you. Thank
8 you very much.

9 I know today's been a long day thus far,
10 and it is my suggestion, unless the parties wish to forest
11 march forward as my brother and ex-Marine used to say,
12 into the night, that we adjourn for the day and pick up
13 tomorrow with the testimony of Mr. Pugh.

14 MR. COMLEY: I do not object to
15 adjournment.

16 JUDGE STEARLEY: And tomorrow when we pick
17 up, Mr. Comley, I believe we can probably continue, unless
18 there's any other objections by any other parties, with
19 the matter of your prefiled objections to testimony of
20 Mr. Pugh and Mr. -- and Ms. Fortney in that they will be
21 taken with the case.

22 MR. COMLEY: I think that's correct. I
23 scanned the objections to Mr. Pugh's testimony, and I
24 think they resemble the ones that we had gone through with
25 Ms. Orler, and I have no objection to that procedure, the

1 procedure we've done to shorten up the objections.

2 JUDGE STEARLEY: And if you see any
3 specific items or if any of the other parties have other
4 specific objections, we can deal with those at that time.

5 I thank you all for your patience today.

6 MS. ORLER: Did you want to do this
7 (indicating).

8 JUDGE STEARLEY: Ms. Orler, I had released
9 you from the stand. If you will please retake your seat,
10 and I remind you that you are under oath. It is my
11 understanding that you now wish to offer a revised version
12 of your Exhibit No. 46; is that correct?

13 MS. ORLER: Exhibit 39.

14 JUDGE STEARLEY: 39. Let me get on the
15 right page here.

16 MS. ORLER: It should be the letter from
17 Ms. Pamela Holstead dated May 17th of 2006.

18 JUDGE STEARLEY: Right. And do you have
19 copies of that that you can distribute to the parties?

20 MS. ORLER: Yes.

21 JUDGE STEARLEY: If you will please do so.

22 MS. FORTNEY: Judge Stearley, I have a
23 question. Since we're the last ones out and probably the
24 first ones in tomorrow, is this place locked? Can we
25 leave stuff in here, or do we have to take everything with

1 us?

2 JUDGE STEARLEY: I will be locking this
3 hearing room. The housekeeping staff may have access to
4 it. I don't advise that anyone leave any valuables of any
5 kind in this hearing room.

6 MS. FORTNEY: I was thinking boxes of
7 documents and stuff.

8 JUDGE STEARLEY: I certainly doubt someone
9 would necessarily have an interest in removing boxes of
10 documents.

11 Have all the parties had an opportunity to
12 look at this now clean copy of Exhibit No. 39?

13 MR. COMLEY: No objection.

14 MS. HEINTZ: No objection.

15 MR. MILLS: No objection.

16 JUDGE STEARLEY: All right. Hearing no
17 objections --

18 MS. HEINTZ: Excuse me. I would just like
19 to make sure that the underlining and bolding that does
20 still appear in the document, Ms. Holstead will attest to
21 that being hers?

22 MS. HOLSTEAD: Yes, I will.

23 JUDGE STEARLEY: I'm sorry. Could you
24 repeat that, Ms. Heintz?

25 MS. HEINTZ: I just wanted to make sure

1 that Ms. Holstead agreed that the bolding and underlying
2 that does remain in this document is hers.

3 JUDGE STEARLEY: Very well. If there are
4 no objections, it will be received and admitted into
5 evidence.

6 (EXHIBIT NO. 39 WAS RECEIVED INTO
7 EVIDENCE.)

8 JUDGE STEARLEY: And with that, we will
9 adjourn for today. Thank you all very much.

10 WHEREUPON, the hearing of this case was
11 adjourned until March 1, 2007.

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