

**SURREBUTTAL TESTIMONY
OF**

**Benjamin D. Pugh
CASE NOS.WC 2006 0082 et al & WO 2007 0277**

Q. PLEASE STATE YOUR NAME AND ADDRESS.

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

Q. BRIEFLY WHAT IS YOUR EMPLOYMENT BACKGROUND?

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

Q WHAT IS YOUR INTEREST IN BIG ISLAND?

A. My wife and I have been property owners on Big Island for 44 years. We have been full time residents since my retirement in 1986. I am very concerned that the growth of Big Island be a responsible and safe growth for its residents .

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A To respond to the Rebuttal Testimony by Mr. Phil Hiley in the case WO 2007 0277

To respond to the Rebuttal Testimony of Mr.Gail Snyder in the case WO 2007 0277

Q. WHAT PART OF MR. HILEY'S REBUTTAL DO YOU WISH TO RESPOND TO?

A. Our telephone conversations on Sunday, 28 January 2007.

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY RELATED TO THE TELEPHONE CONVERSATIONS WITH MR. HILEY?

A. To clarify several points which Mr. Hiley made related to those cordial conversations. Mr. Hiley was correct that I initiated the original call for the purpose of obtaining a hard copy of the Bylaws for this new 393 which was to be voted on the following day. The following two calls were initiated by Mr. Hiley. I was under the impression that I was engaged in a private conversation with Mr. Hiley ; and was surprised to see our conversation in print on EFIS as a PSC pubic document.. Since it is now a public document I will try and make some corrections and comments on that conversation as I remember it. I had not felt it necessary to make notes of our informal discussion. I commented to Mr. Hiley that Mrs. Holstead had done a good job the day before in chairing the

1 meeting among Big Island neighbors to discuss the pros and cons of a 393 for Big Island. The
2 meeting went well. At least no one at that meeting was told to move off the island because our
3 opinions differ from those wanting a 393; as was the case at the June 2, 2007 Camdenton meeting.
4 My thoughts on a 393 have not changed since I first became aware of the 393. I think it could be
5 satisfactory for a company developing an area where there are no previous commitments and
6 agreements to existing residents. The previous agreements between the developers and the existing
7 homeowners, who were here at the time of the developers arrival, are in direct conflict with the By
8 Laws of the 393. These differences can only be solved by having the sewer and water system
9 operate as a regulated public utility. At the time we originally went to the PSC with our complaints,
10 all possible alternatives were considered and the 393 was one of them. Through these 18 months
11 before the PSC, I have tried to keep an open mind as I was that day talking to Mr. Hiley. I don't
12 recall ever saying I was for a 393 either on the record or "off the record". I made it real clear that
13 the "As Is" attached to the 393 which has been offered to the Big Island residents is a potential
14 liability I am unable to accept. Mr. Hiley agreed with me as he said he also had concerns with that.
15 The "AS IS" was the only problem we really discussed because at that point I hadn't even had a
16 chance to study the By Laws of the BI 393. Questions and answers sessions are good; but the truth
17 lies between the covers of those many pages of the By Laws. I regret that even at this late date not
18 many homeowners have had a chance to read the by laws; and yet were expected to vote on such a
19 vital instrument based on a 4 page brochure which was written by neighbors who definitely had a
20 bias against a regulated system..

21 **Page 3 line 13.** I did not think it was proper for Mr. Hiley to suggest we drop our objections to the
22 393 for a sum of money. I did not feel that was an aboveboard way to solve the "As Is" problem.

23 **Page 3 Line 20** On Mr. Hiley's second and third calls, he proposed another idea which involved
24 settlement of the "Orler complaint case". I did not think it was appropriate for me to involve myself
25 in what Mr. Hiley proposed; and interfere with Ms. Orler's complaint case.

I feel very disappointed that Mr. Hiley chose to make a cordial private conversation a public matter.

Q MR. SNYDER IN HIS REBUTTAL TESTIMONY MADE COMMENTS TO WHICH I WOULD LIKE TO RESPOND . MR. PUGH, WHAT ARE THOSE RESPONSES?

A. Page 3 Line 11 Mr. Snyder cites Mr. McDuffey as saying that it is unnecessary to label the water and sewer taps because “all professionals could tell the difference”. These professionals Mr. McDuffey is talking about installed the complete system in violation of the DNR regulation . These professionals put the drinking water at high risk. These professionals put the health of the residents on Big Island at high risk. Not by my standards; but by the DNR and National standards, regulations and codes. Unfortunately, drinking water and sewer water systems, being reversed are not that uncommon according to previous conversations with the DNR.

Page 4 Line 2 Mr. Snyder in his rebuttal, claims that all the problems that now exist are on private property. I believe he is referring to the sewer and water valves in the same upright at the address 1536 Big Island Drive. That is not the only problem that now exist. I hope that Mr. Snyder is not condoning that installation because those illegally installed valves are not under the jurisdiction of the DNR. I hope that Mr. Snyder is not suggesting that we should ignore the problem. The DNR states that any installations without jurisdiction should come under the National Codes, The National Codes are very similar to the DNR Codes, related to the 10 foot minimum separation of the sewer and water systems. In my opinion the complete system should be considered as a health risk, not just picking and choosing. As an example: The BIHOA has the right and responsibility to dictate the size, the quality, the frequency of sumping of the septic tanks which are a integral part of the system. The septic tanks are on private property, To say that these valves have no jurisdiction because they are on private property is contradictory.

Page 7 Line 25 Mr. Snyder states that the developers have warranted the system for 5 years. I agree that Folsom Ridge warranted a system which proved to be installed improperly from

1 beginning to end. Does that relieve them of the responsibilities to warrant the current system? I
2 think not. I was not allowed to take pictures during working hours of the re-installation process so I
3 have concerns . I felt that pictures taken by me could have been beneficial to all parties.

4 Page 6 Line 6 First I want it known that I have never joined an organization in which I was not
5 willing to participate. I consider that a responsibility any member takes when agreeing to
6 membership. I also would not willingly join any organization that would not allow a member to
7 hold a board position whose views might be different from the board. That would be
8 discriminatory. In fact, this board has eliminated a large portion of the island residents who could
9 be on the board by requiring that any board member be users of both systems.. What they have
10 done is make it almost impossible to get enough board members to operate and govern the sewer
11 and water systems. The end result will be what we have now with the BIHOA, a 393 controlled by
12 the Developers or their employees. I question the legality of some of the decisions by the board,. In
13 my opinion any member should be allowed to be an officer of the 393. .

14 **Page 6 Line 12** My point above can best be confirmed by the statement of Mr. Snyder ,"In the end
15 we couldn't locate enough full time residents who were willing to serve." In my opinion, Mr.
16 Snyder made our case for a regulated public utility. Big Island is a recreational area, of many part
17 time homeowners who come to the lake to relax, fish, swim and boat. They do not want to spend
18 their lake hours in board meetings. Despite all the misinformation of the cost for a regulated
19 system, the cost should be no more than 20% above that of the 393. 10 % profit for the certified
20 operator, 10% for the PSC for regulation of the systems. Many residents have not been
21 informed that for this 20%;

- 22 a. You have eliminated spending your free recreational time in board meeting.
- 23 b. You have eliminated the liabilities associated with operating a 393. You have shifted the liabilities
- 24 back to the people who created them.

1 c. You have lessened the litigation problem referring to the previous agreements between the existing
2 homeowners and the Developers.

3 d. You have the Public Service Commission as a regulatory agency to assure the homeowners of a
4 fair price, and a safe operating system..

5 e. You have a regulatory agency to contact in event of a problem .

6 It is quite understandable that Mrs. Holstead and other 393 board members did not spend much time
7 explaining the advantages to a Regulated Certified public utility. I think the 20% addition expense is a
8 bargain. I do understand that the operation of the sewer and water system is only as good as the
9 intentions and capabilities of the operators. That applies to a 393 as well as a regulated public utility.

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11 **Q. WILL THERE BE OTHER SURREBUTTALS?**

12 **A.** Yes

13 **Q. DOES THIS CONCLUDE THIS SURREBUTTAL?**

14 **A.** Yes,
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