SURREBUTTAL TESTIMONY

OF

Cathy Orler

CASE NO. WC-2006-0082 & WO-2007-0277

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. Cathy Orler. I reside at 3252 Big Island Dr., Roach Missouri 65787.

Q. WHAT IS YOUR EMPLOYMENT EXPERIENCE?

A. My employment experience is in: sales/sales management; business management/operations; business management consulting with areas of concentration in growth, performance, productivity, profitability and efficiency. I've been a business owner involved with mergers/acquisitions and sales.

Q. WHY ARE YOU PROVIDING SURREBUTTAL TESTIMONY?

A. "After nearly six years of ongoing controversy concerning my "non-membership" in the Big Island Homeowners Association, (BIHOA), (and the "creatively imposed fees" associated with this), between myself, and other residential property owners on Big Island, and Folsom Ridge, (F.R.), (the developer of Big Island,) with no resolve; and now the "threat" of a lawsuit for creatively imposed and erroneous back fees owed, I have been left with no choice, and therefore forced to file a Formal Complaint with the Public Service Commission."

The basis of my complaint is that the BIHOA is not operating as a Homeowners' Association (HOA) as per the Department of Natural Resources' (DNR), Regulations' Requirements of membership as cited in a letter from the DNR to F.R. to the attention of Reggie Golden – by servicing and/or billing users and non-users who are not members of the BIHOA; and therefore should be regulated as a public utility by the MPSC.

Furthermore, the BIHOA which is controlled by F.R. by a vote that is governed and dictated by the number of property lots owned as stated in the Article V – Association Membership and Voting Rights; Section 2 Voting Class of the Amended and Restated Declaration of Covenants and Conditions that were established in the year 2000 for the sole purpose of the operation and management of the water and sewer system as described in Article II, Section 1-C of the Amended and Restated Bylaws of the BIHOA, Inc. and the Amended and Restated Declaration of Covenants and Conditions. This was nearly two years after the issuance of a construction permit an operating permit by DNR and not in accordance with the DNR Regulation requirements of 10 CSR 20-6.010(3) (A). As a result, the following situations of non-members' fees issues exists:

In 1998, existing property owners on B.I. with their own private wells and septic systems and with other long established restrictive covenants already in place were solicited by F.R. LLC, the developer, to purchase water and sewer taps as a means to fund and cash flow their installation of a central water and wastewater system and the residents were then required to pay up front $4800.00 for sewer and $2000.00 for water taps. This money was held in escrow at Central Bank in Camdenton, Missouri until completion of the system(s). Residents were told there would be no additional charges until which time they connected to the new system and they would have a guaranteed and reserved future right to connect to the system at a time of their choosing. There was no association, (i.e. HOA) in place as a functional and operational organization to oversee, maintain and operate the water and sewer utility system at the time the agreements were made and monies were exchanged and taps were purchased. No mention and/or disclosure of any membership affiliation requirements at any time was made and therefore no signatures were required and/or obtained. The current BIHOA which is the organization that later was created to manage the water and system, did not become operative until approximately two years later. The jurisdiction of the

DNR governing water and wastewater require that a permanent organization be in existence before commencing with the construction of the system. The BIHOA did not elect their first board members until December 29, 2000; again, nearly two years after the construction permit was issued by DNR. The BIHOA has been, has continued and is currently charging mandatory monthly fee assessments to non-members as follows:

1. Property owners who have paid for a water and/or sewer tap and by virtue of this have the future right to connect to the system, but are not presently connected to the system, and have NOT ratified the Amended and Restated Covenants and Conditions, and are NOT members of the BIHOA

2. Property owners who are not connected and are not receiving any services

3. Property owners who have NOT ratified the Amended and Restated Covenants and Conditions to mutually agree through bilateral consent to membership in the BIHOA, but are connected to the utility and receiving service(s)

4. Property owners who are connected to the utility system and who are receiving service(s)

Numerous attempts between resident property owners and F.R., controlling the BIHOA, to resolve this situation have been ongoing for nearly six years with no resolution. A "sense of urgency" has been created in that actual members of the BIHOA as a "continuing authority" will assume liability for the water and sewer system in September, 2005 and ownership of the system in September, 2006.

In addition, my concern, as well as the concerns of other resident property owners who are not members of the BIHOA is that F.R. controlling the BIHOA is currently trying to create, yet another, 'new HOA' to overcome the "non-member" resistance in which all residents would be forced to become members. This 'new HOA' would replace the current BIHOA as well as all other existing HOA's, including the HOA of my subdivision which governs my property and in which I am already a member – and to which extent, I do not want to abandon or dissolve my membership and/or my HOA that are currently in place and have been in existence since the early 1960's when the island was first being developed.

Our concern is that this 'new HOA' is incorporating the present BIHOA and its specific function of the operation of the water and sewer system thus forcing residents through imposed membership to assume the financial and legal liability and responsibility for a water and sewer system which has proven to be 'sub standard' as per the Settlement Agreement between F.R., the developer, DNR and the Attorney General's Office and in violation of it's operating practices as set forth in this Formal Complaint. In addition, F.R., the developer, most recently expanded the original and present water system with a maximum capacity to service eighty homes off the island to include approximately 160 acres of virgin development with no disclosures to its members and/or residents and in violation of DNR Regulation requirements by not obtaining a new construction permit from DNR and submitting engineered stamped and approved drawings for this purpose. Moreover, in documents of correspondence sent out to residents of Big Island on BIHOA letterhead and signed by the developers, they have assured residents that this concern has been addressed by committing to: "restricting the boundary of the area the system will serve to only include the Big Island Lake Sites, Big Island Lake Sites 1st Addition, Portage Park Unit 3, Portage Park Unit 1 and all other property on the island (peninsula) itself…..thus eliminating approximately 160 acres that is somewhat separate

anyway." It is also questioned if this new and recent expansion of the current water system infrastructure to accommodate and service approximately 160 acres of F.R.'s future off island development has been presented to Camden County Planning and Zoning for approval?

In summary, and as a solution, I suggest that the MPSC request from BIHOA, and/or F.R. who is controlling the HOA, a listing of it's customers and members:

1. My name appearing as a customer and/or member of the BIHOA would undeniably confirm that the BIHOA is not operating as an HOA, because I am neither a customer nor a member (I do not receive any service nor have I signed any documents to bilaterally consent and agree to membership, and therefore be subject to the regulations of the BIHOA), yet I am being billed.

2. My name being omitted from a listing of customers and members, also undeniably confirms that the BIHOA is not operating as an HOA, because I am being billed regularly by the BIHOA, and therefore my name should be appearing as a customer and member, yet I am not a member of the association.

Therefore, the BIHOA is acting as an unlicensed public utility by providing service to non-members and should be regulated by the MPSC.

I realize that as per the MPSC guidelines for filing a Formal Complaint, this 'Formal Complain' should include a listing of BIHOA members. However, this request to F.R. has been made numerous times by myself and other residents and continues to be ignored; I feel for the obvious reasons stated above in #1 and #2. However, to confirm with the MPSC, the integrity of my 'Formal Complaint' as well as maintaining the integrity and validity of the information contained herein, I will make a final,

written request to F.R. controlling the BIHOA for a copy of it's customers and members listing. This written request will serve as support documentation and verification for the MPSC, if again my request is ignored, that all efforts to obtain this listing were met with opposition and failed. If however, by come chance, my written request should be honored, then the basis of my 'Formal Complaint' as well as the guidelines for filing my complaint will have been satisfied.

The relief requested of the MPSC as a result of this 'Formal Complaint' is a temporary injunction halting the transfer of liabilities, both financially and legally, of the BIHOA water and sewer system to the actual members of the association as the continuing authority from F.R. on September, 2005 and the transfer of ownership of the same on September 01, 2006; until a determination and ruling can be made by the MPSC as to the BIHOA and it's legal operation as an HOA, meeting all those requirements, or it's legal operations as a public utility, meeting all those requirements. As a result of this determination and ruling wherein the current water and sewer system of Big Island is operating as an unlicensed public utility and subject to regulation within the jurisdiction of the MPSC, the situation of member vs. non-member, non customers receiving service and/or being billed would be very clearly defined, and in affect, become moot and a 'non issue.'

Although this 'Formal Complaint' is being filed by me and bears only my signature, the situation cited herein, involves numerous residents and property owners on Big Island.

The assistance of the MPSC in resolving this ongoing controversy is very greatly appreciated.

Q. WAS THIS RECENTLY WRITTEN AS A SURREBUTTAL TESTIMONY

RESPONSE?

A. No – this was my Formal Complaint submitted to the Missouri Public Service Commission, on August 18, 2005.

Q. WHAT HAS CHANGED REGARDING THE ISSUES OF THE WATER AND SEWER UTILITY ON BIG ISLAND, SINCE THE FILING OF YOUR FORMAL COMPLAINT, NEARLY 19 MONTHS AGO?

A. Nothing.

Q. PLEASE EXPLAIN?

A. **1.** The BIHOA is continuing to operate as an unlicensed public utility by billing and servicing individuals who are not members, and/or not receiving any services

2. The developers, Mr. Reginal Golden and Mr. Rick Rusaw of Folsom Ridge, LLC, continue to own and control the BIHOA by an appointed majority representation of the board of directors and through the voting of lots within the association

3. The developer, Mr. Reginald Golden and Mr. Rick Rusaw of Folsom Ridge, LLC, continue to and are presently in violation of the Department of Natural Resources regulations in the construction, operations, management and administration of the utility

4. The developers, Mr. Reginald Golden and Mr. Rick Rusaw of Folsom Ridge, LLC continue to violate the provisions of their own Amended and Restated Covenants and Conditions and Bylaws governing the association

5. The developers, Mr. Reginald Golden and Mr. Rick Rusaw of Folsom Ridge, LLC continue to violate commitments made under signature to residents of Big Island

6. The developers, Mr. Reginald Golden and Mr. Rick Rusaw of Folsom Ridge, LLC have continued to provide to the MPSC, DNR and the residents of Big Island information that is inconsistent, false and misrepresented throughout these proceedings before the Commission

7. The 'new HOA' being created, as referenced in my Formal Complaint, is now known as the 393 Companies with proven alliances towards the Developer as follows:

A. In communications from Ms. Holstead to residents, Ms. Holstead states, "…no customer who has filed complaints agains the developer would serve on the first Board of Directors." In addition, in an e-mail sent to residents by Ms. Holstead, she asserts that she '….believes the PSC guidelines should instead provide one vote per lot which would allow the developer to maintain control over the utilites.' Also, Ms. Holstead can be quoted from another e-mail sent to residents as saying, 'I believe the developer who bore the cost of installing the utilities should not be forced to relinquish all control over those utilities….' Again, in Ms. Holstead's written testimony submitted at the Public Hearing in the complaint case held on June 2nd, 2006, Ms. Holstead testifies that she '….believes the PSC guidelines should be altered to allow one vote per lot instead of one vote per customer as I believe that is in the public's best interest.' Also, as a part of Ms. Holstead's testimony is her statement: 'there are those who believe Mr. Pugh,' (complainant and intervenor), 'will be satisfied by nothing less than a public hanging of the developer. PSC has become the rope." Quoted statements made by Ms. Holstead prove a bias towards the developer.

B. The willingness of the 393 Companies to accept the water and sewer utility 'AS IS' and impose the financial and legal responsibilities and liabilities associated with this utility

on residents is questionable. This utility has a proven history to the present of substandard construction and improper operations; in my opinion, NO resident of Big Island should be forced to accept this utility 'AS IS," and have the liabilities associated with it, forced upon them

C. The language of the 393 companies' Bylaws and the asset transfer agreement are not neutral with regard to the developer. This assessment is shared by other Complainants and Interveners and confirmed by legal opinion.

D. The creation of a vote for a majority support of the 393 Companies is tied to a vote for the transfer of utility assets within the current BIHOA that is being owned and controlled by the Developer through the voting of lots

E. The 393 Companies' Board of Directors did NOT involve independent contractors, engineers, project managers or other residents as a part of the walk through inspection to ensure a neutral evaluation of the utility supported by professional expertise

Residents continue to object to the liabilities, both financially and legally, for a utility that has been proven substandard in its construction and operations being imposed on them through a mandatory membership in an HOA as an additional and conditional requirement to be able to receive utility service.

Q. WAS YOUR INTENT IN FILING YOUR FORMAL COMPLAINT WITH THE MPSC FOR PUBLIC REGULATION OF THE UTILITY ON BIG ISLAND IN AN EFFORT TO AVOID BRINGING LITIGATION AGAINST THE INDIVIDUALS

YOU CONSIDERED TO BE YOUR NEIGHBORS AND FRIENDS IN THE BIG ISLAND COMMUNITY?

A. Yes.

Q. PLEASE EXPLAIN?

A. In my Formal Complaint I stated that regulation of this utility by the MPSC would make the issues of member and non-member moot. Additionally, through regulation of this utility by the MPSC, customers of the utility would NOT be responsible or liable for the system's substandard construction and operations – quite simple really, as an alternative to litigation.

Q. CAN LITIGATION AGAINST THE 393 COMPANIES BE AVOIDED IF THE TRANSFER OF UTILITY ASSETS TO THE 393 COMPANIES BY THE MPSC IS APPROVED?

A. No.

Q. PLEASE EXPLAIN?

A. By approving the transfer of utility assets to the 393 Companies, the Commission will be facilitating litigation suits being brought against the 393 Companies, immediately, by those individuals who are objecting to the imposed membership in the 393 Companies as an additional and conditional requirement to be able to receive utility service and having the liabilities associated with this utility also being imposed through membership.

Q. DO YOU FEEL THAT THE INFORMATION PRESENTED BY MS. HOLSTEAD TO THE RESIDENTS OF BIG ISLAND WAS AN IMPARTIAL AND ACCURATE REPRESENTATION OF THE MPSC REGULATION TO ALLOW RESIDENTS TO

MAKE A TRULY INFORMED DECISION BETWEEN MPSC REGULATION AND 393 COMPANIES?

A. No, I don't.

Q. PLEASE EXPLAIN?

A. In an email from Ms. Holstead sent to Big Island residents dated 05/10/2006, Ms. Holstead states the following: 'I am opposed to anything that will increase my utility costs and it is my understanding if our utilities are PSC regulated, there will be a substantial increase in the fee currently being charged for my water and sewer service.' However, in an email sent to Ms. Holstead , nearly 5 months earlier from Mr. Jim Merciel of the MPSC, Mr. Merciel makes the clarification to Ms. Holstead by stating: 'There seems to be a lot of talk regarding a regulated utility being substantially more expensive than other types of utilities, however, the only additional costs that regulated utilities directly incur is an annual assessment, which is approximately one and a half percent of revenue for water utilities and approximately 8% for sewer utilites….whatever rates you are paying today may or may not reflect the true cost of service.'

Q. DID MS. HOLSTEAD PRESENT TO RESIDENTS THE COST ASSOCIATED WITH REGULATION THAT WAS PROVIDED TO HER BY MR. MERCIEL?

A. I have no records to indicate that it was. However, as the opposition towards MPSC regulation advanced, Complainants were excluded from residential correspondences and meetings.

REFERENCE REBUTTAL TESTIMONY OF PHIL HILEY

Q. DOES MR. HILEY, IN HIS REBUTTAL TESTIMONY, CONFIRM THE VALIDITY OF MS. ORLER'S DIRECT TESTIMONY REGARDING MR. HILEY

APPROACHING COMPLAINANTS AND ASKING THEM TO USE THEIR FORMAL COMPLAINTS AS LEVERAGE TO REQUIRE FOLSOM RIDGE TO PROVIDE A CASH ACCOUNT TO THE 393 COMPANIES, IF THE COMPLAINANTS WOULD DROP THEIR COMPLAINTS?

A. Yes.

Q. PLEASE PROVIDE EXAMPLES.

A. On page 3, lines 13-23 and on page 4, lines 1-8 of Mr. Hiley's rebuttal testimony he confirms the validity of my direct testimony in that he did indeed approach the Complainants and asked that they use the leverage of their Formal Complaints against Folsom Ridge to require Folsom Ridge to provide a cash reserve account to the 393 Not For Profit Companies, if the Complainants would drop their Formal Complaints.

Q. HAS MR. HILEY PROVIDED OTHER TESTIMONY REGARDING THE FEES CHARGED TO NON-MEMBERS OF THE BIHOA, BY FOLSOM RIDGE OWNING AND CONTROLLING THE BIHOA?

A. Yes. In the Public Hearing held June 6th, 2006, Mr. Hiley testifies under oath, that: 'I did pay my quarterly fees that were billed by Folsom. So, I guess I'm a nonmember, I didn't sign the HOA. So I am a nonmember and a noncustomer. I still pay my fees.' '….as far as I'm concerned, people who didn't pay them, that's their choice.' 'I don't want my money back. If Reggie says I'll send your money back, Phil, I'll say I don't want it, just keep it in the system.'

Q. WHY IS MR. HILEY NOW ASKING COMPLAINANTS TO USE THEIR FORMAL COMPLAINTS AS LEVERAGE AGAINST FOLSOM RIDGE TO RETURN THE

FEES CHARGED TO NONMEMBERS AS A CASH CONTRIBUTION TO THE 393 COMPANIES, WHEN MR. HILEY HAS PREVIOUSLY STATED UNDER OATH THAT HE DOES NOT WANT HIS MONEY BACK?

A. I cannot answer why Mr. Hiley's statements under oath are contradictory.

Q. DOES MS. ORLER ACCEPT OR CLAIM OWNERSHIP OR RESPONSIBILITY FOR A GROUP REFERRED TO AS "CATHY ORLER'S GROUP ON PAGE 3, LINE 13; OR ON PAGE 4, LINE 8 AS "THE ORLER GROUP" THAT MR. HILEY MAKES REFERENCE TO IN HIS REBUTTAL TESTIMONY?

A. No. Ms. Orler does not accept nor claim ownership or responsibility for a group or any group, or any individuals that Mr. Hiley may make reference to as being associated with her by name.

Q. DOES MR. HILEY HAVE A CLEAR UNDERSTANDING OF SOME OF THE STATEMENTS HE HAS TESTIFIED TO IN HIS REBUTTAL TESTIMONY?

A. I don't believe he does.

Q. PLEASE IDENTIFY THOSE STATEMENTS.

A. On page 4, line 16, Mr. Hiley states: '….I then found out that she had filed some kind of lawsuit.' Mr. Hiley is incorrect in his understanding that I, filed a lawsuit. A group of 'Plaintiffs', including several individuals, as well as myself, filed a petition with 'claims against the assets of the utility.' Being Plaintiffs in the petition that was filed, direct conversation with any of the Defendants is not recommended and any discussions should be through the respective attorneys; as I cautioned to Mr. Pugh regarding the conversation he was having with Mr. Hiley.

Q. CAN YOUR STATEMENT REGARDING CONVERSATIONS BETWEEN PLAINTIFFS AND DEFENDANTS BE SUPPORTED WITH DOCUMENTATION?

A. Yes. CO Schedule 1, is an email received by Plaintiffs from Defendant, Ms. Holstead. My reply to Ms. Holstead confirmed receipt of her email and the forwarding of that correspondence to the attorney for the Plaintiffs.

Q. ON PAGE 3, LINES 22 AND 23, OF MR. HILEY'S REBUTTAL TESTIMONY, HE REFERENCES THE TELEPHONE CONVERSATION BETWEEN HIMSELF AND MS. ORLER. DO YOU THINK THAT MR. HILEY UNDERSTANDS THE VOTING PROCESS OF THE BIHOA?

A. No – I do not. As clearly presented in the previous questions and answers preceding, this question and answer. In Mr. Hiley's rebuttal testimony, on page 4, line 22 and 23, I asked Mr. Hiley if he knew that Folsom Ridge had total control of the asset transfer vote. His reply was: "…do you think I'm stupid?" Mr. Hiley asked and answered his own question.

Q. **HAS MR. HILEY PROVIDED OTHER TESTIMONIES UNDER OATH, THAT INDICATE HIS LACK OF UNDERSTANDING REGARDING FOLSOM RIDGE'S CONTROL OF THE BIHOA, THROUGH THE VOTING STRUCTURE?**

A. Yes. At the Public Hearing held on June 06, 2006, Mr. Hiley states; "I am treated as a member. I'm invited to the meetings and I'm allowed to vote."

Q. ON PAGE 5 OF MR. HILEY'S REBUTTAL TESTIMONY, LINES 9-13, MR. HILEY AGAIN QUESTIONS MS. ORLER ABOUT THE 'SUIT.' I WAS

ASSUMING HE WAS REFERENCING THE PETITION FILED BY THE PLAINTIFFS. DO YOU THINK THAT MR. HILEY HAS A CORRECT UNDERSTANDING OF THE CLAIMS THAT WERE FILED AGAINS THE ASSETS OF THE UTILITY?

A. No – I do not. Again, Mr. Hiley's reply, referring to himself: "I must be stupid." Again, Mr. Hiley has asked and answered his own question. Furthermore, the claims filed against the utility assets, would include the bank account that Folsom Ridge is planning to transfer to the 393 Companies. In addition, the Amended and Restated By-laws governing the BIHOA, specifically state in Article II – Purposes, Section 1. Item "h:" In the event of the dissolution of the corporation, members shall be entitled to any distribution or division of its remaining property or the net proceeds from the sale of corporate assets. This would include any bank account, that Folsom Ridge has committed to the 393 Companies – this "remaining property," must be distributed to members of the BIHOA.

Q. IN MR. HILEY'S REBUTTAL TESTIMONY, HE STATES ON PAGE 5, LINES 14 THROUGH 16, THAT HE IS "WITHDRAWING FROM ANY NEGOTIATIONS WITH THEM, (COMPLAINANTS), TO COME UP WITH SOME KIND OF SETTLEMENT." HAD COMPLAINANTS ENTERED INTO NEGOTIATIONS WITH MR. HILEY TOWARDS A SETTLEMENT?

A. No. However, on numerous occasions throughout the eighteen, (18), months that this case has been before the Commission, I and other Complainants have made attempts to discuss the utility issues with Mr. Hiley, in hopes of a possible resolve, but each time an effort has been made, the same result, as stated by Mr. Hiley above, has occurred.

REFERENCE REBUTTAL TESTIMONY OF GAIL SNYDER

Q. WOULD YOU LIKE TO CLARIFY ANY STATEMENTS MADE BY GAIL SNYDER IN HIS REBUTTAL TESTIMONY?

A. Yes. Mr. Snyder states that the 393 Companies are hiring the same management company that Mr. Gary Cover, receiver for other utilities in the lake area has hired. I would like to point out that this is a contract management position and that the direction and oversight of the person(s) and/or the company or organization responsible for the hiring of this individual and/or company is paramount in determining the level of performance that is expected and acceptable from this individual and/or company. In my opinion, the 393 Companies have not demonstrated an adequate understanding of the utility issues to possess the necessary 'business sense' required to effectively and efficiently own, operate, manage and administer a water and sewer utility and provide oversight and direction to other individuals.

Q. MR. SNYDER STATES IN HIS REBUTTAL TESTIMONY ON PAGE 5, LINES 40-45 THAT MS. ORLER HAS NOT ATTENDED ANY MEETINGS OF THE 393 BOARD OF DIRECTORS. IS THIS CORRECT?

A. Yes. I have never been invited to attend, or included in any of the meetings held, that involved the 393 companies.

Q. DOES MR. SNYDER HAVE SUPPORT DOCUMENTATION TO PROVE HIS STATEMENT MADE ON PAGE 6, LINE 6, THAT "MS. ORLER IS SPEARHEADING THE PSC COMPLAINTS."

A. Mr. Snyder would NOT have any documentation to support an incorrect statement, such as this. MPSC documents prove that 9 individual Formal Complaints were filed with the MPSC.

Q. DOES MR. SNYDER INDICATE DIFFICULTY IN LOCATING 'FULL-TIME RESIDENTS WHO WERE WILLING TO SERVE' ON THE BOARD?

A. Yes – Page 6, lines 12-15.

Q. DID THE COMPLAINANTS MAKE MR. SNYDER AND MS. HOLSTEAD, AS WELL AS OTHER RESIDENTS AND THE MPSC, AWARE OF THIS POTENTIAL PROBLEM IN BEING ABLE TO RETAIN INDIVIDUALS WILLING TO SERVE ON A WATER AND SEWER UTILITY BOARD?

A. Yes. On June 6th, 2006, in the Public Hearing, Complainants prepared a handout for all individuals in attendance. CO Schedule 2. This handout outlined the fact that 'To the knowledge of the Complainants, there are no residents who are experienced in the management and operations of a water and sewer system who are willing and/or logistically or physically available to serve on an HOA board for this purpose.'

Q. MR. SNYDER ON PAGE 6, LINES 16-23 AND PAGE 7, LINES 24-29 STATES: 'MS. ORLER SEEMS TO THINK THAT BECAUSE WE ARE COMMUNICATING WITH THE DEVELOPER'S ATTORNEY WE ARE BEING CONTROLLED BY THE DEVELOPER.' DID YOU MAKE THIS REFERENCE IN YOUR DIRECT TESTIMONY?

A. No, I did not. Until Mr. Snyder's rebuttal testimony statement, I was not made aware that the 393 Companies were communicating with the developer's attorney; Correspondences sent to the island

residents regarding the 393 Companies and the transfer of assets have stated that negotiations have been with the developer. My direct testimony used numerous correspondence and direct quotes from these correspondences made by Ms. Holstead under signature to residents stating her convictions that the developer should control the utility.

Q. MR. SNYDER STATES THAT THE 393 COMPANIES WILL BE RECEIVING FUNDS FROM THE BANK ACCOUNT OF THE BIHOA, AS A PART OF THE TRANSFER OF ASSETS. DO THE 393 COMPANIES HAVE A SPECIFIED AMOUNT IN WRITING, AND GUARENTEED BY SIGNATURE AND BOND?

A. This was not indicated.

Q. CAN THIS TRANSFER OF FUNDS FROM THE BIHOA BANK ACCOUNT TO THE 393 COMPANIES TAKE PLACE?

A. No, it cannot.

Q. PLEASE EXPLAIN?

A. First of all, Plaintiffs have filed a petition, with claims against the assets of the utility – this claim would include the assets of a bank account. Moreover, in the Amended and Restated By-laws of Big Island Homeowners' Association Inc., ARTICLE II – Purposes, Section 1; "H:" "In the event of the dissolution of the corporation, members shall be entitled to any distribution or division of its remaining property or net proceeds from the sale of corporate assets." Although the corporate assets

are being transferred, this transfer is in consideration of dollar amounts associated with future tap connections, and the corporation will be dissolved.

Q. HAVE YOU MADE ALLEGATIONS THAT "393 PRESIDENT, PAM HOLSTEAD, IS BASICALLY UNFIT TO LEAD THE 393 COMPANIES?" (PAGE 9, LINES 26 THROUGH 35 OF MR. SNYDER'S REBUTTAL TESTIMONY).

A. No, I have not. Mr. Snyder's testimony appears to have lost its objectivity to the issues, and resulted in emotional and subjective conclusions being rendered. I have asked, what qualifications, prior experience, and credentials, the individual board members have to enable them to adequately and responsibly, maintain and execute the duties and responsibilities of the positions of the offices they hold.

Q. MR. SNYDER IN THIS SAME PARAGRAPH STATES: 'OBVIOUSLY, MRS. ORLER DOES NOT WANT A RESOLUTION WHICH IS NOT OF HER OWN MAKING.' DOES MR. SNYDER HAVE DOCUMENTATION TO SUPPORT THIS PUBLIC STATEMENT?

A. No, he would not have anything to support a subjectively conclusive statement, such as this. However, the very fact that the issues of this utility are before the MPSC as a part of these proceedings, for a Final Determination and Ruling to be made by the Commission, would indicate that the resolution to the utility issues, is being made within the jurisdiction of the authoritative body known as the Missouri Public Service Commission, and NOT Ms. Orler's own making - Ms. Orler does NOT own the Commission.

REFERENCE THE REBUTTAL TESTIMONIES OF JAMES MERCIEL AND MARTIN HUMMEL

Q. DO YOU AGREE WITH MR. MERCIEL'S TESTIMONY ON PAGE 3, LINES 12 THROUGH 18, THAT BECAUSE "...MOST RESIDENTS BELIEVED THAT THEY, IN EFFECT OWNED AND CONTROLLED THE UTILITY SYSTEMS, THOUGH I BELIEVE THAT THE ASSOCIATION WAS ACTUALLY CONTROLLED BY FOLSOM," ...THE CONCEPT OF THE 393 COMPANIES IN FACT PROVIDES FOR CONTROL BY THE CUSTOMERS?"

A. No – I respectfully disagree with Mr. Merciel. The incorrect perception of homeowners who thought that they were owning and controlling the utility systems, is NOT justification that they should actually be owning and controlling the utility systems. Specifically, the false misconceptions these same individuals have, regarding the reality of ownership and control of a utility, and being responsible and liable for its construction and operations, are NOT the realities of utility ownership and control. Folsom Ridge has subsidized the operations of this utility, therefore, these individuals who thought they, were owning and controlling the utility, were not exposed to the realities involved, and their preconceived thoughts are unrealistic. Incorrect perceptions and misunderstandings, do not justify or equate to, or ensure the success of a homeowner owned utility, in reality.

Q. WHAT IS YOUR OPINIION OF MR. MERCIEL'S STATEMENT: 'THE 393 COMPANIES, AS NON REGULATED ENTITIES, HAVE FLEIBILITY WITH

REGARD TO HOW THEY MAY WISH TO HANDLE THESE ISSUES, IF AT ALL?'

A. Mr. Merciel is correct in this statement – this "flexibility," is the exact result of Formal Complaints being filed with the PSC regarding this utility and its substandard construction and operations; too much flexibility, and not enough regulation, has resulted in the very issues before the Commission today. The utility issues of Big Island, have been ongoing for nine, (9), years; "the flexibility with regard to how they may wish to handle these issues, if at all," demonstrates the need for regulation to address, correct, and finally resolve these issues.

REFERENCE THE AMENDED AND RESTATED COVENANTS AND CONDITIONS AND THE AMENDED AND RESTATED BY-LAWS OF THE BIG ISLAND HOMEOWNERS' ASSOCIATION, INC.

Q. DO THE AMENDED AND RESTATED COVENANTS AND CONDITIONS AND THE AMENDED AND RESTATED BY-LAWS GOVERN AND CONTROL THE OPEARTIONS OF THE BIHOA?

A. Yes.

Q. WAS THE "NOTICE OF SPECIAL MEETING OF BIG ISLAND HOMEOWNERS WATER AND SEWER ASSOCIATION, INC.," TO NEGOTIATE TO

CONCLUSION THE TRANSFER OF ALL OF THE ASSOCIATION'S RIGHT, TITLE AND INTEREST IN AND TO THE WATER AND SEWER SYSTEMS SERVING BIG ISALND TO THIRD PARTIES, AND TO TERMINATE OR MODIFY THE CURRENT RESTRICTIVE COVENANTS OVER WHICH BIHOA HAS OVERSIGHT, A LEGITIMATE OR LEGAL MEETING?

A. No – it was not.

Q. PLEASE EXPLAIN.

A. The Amended and Restated By-laws of the BIHOA, require a thirty, (30) day notice to be given to the corporation membership. Article X – Meetings of the Membership, Section 2 and 3.

Section 2. It shall be the duty of the secretary of the Board of Directors to cause a notice of each annual meeting to be given to each corporation member by mailing a notice to the home post office address of each member as shown by the records of the corporation at least thirty (30) days prior to any annual meeting which shall give the hour and place of the meeting.

Section 3. Special meetings of the corporation membership may be held from time to time whenever called by the President of the Board of Directors by a majority of the Board of Directors. A special membership meeting shall be called at any time by the President or Vice-President upon the written request or petition of one-third or more of the corporation members. Notice of any

special meeting indicating briefly the object or objects thereof shall be given by the secretary to each and every member in the same manner as provided for the giving of notice for each annual meeting.

Q. WAS THERE A 30 DAY NOTICE OF THIS SPECIAL MEETING GIVEN TO THE CORPORATION MEMBERSHIP?

A. No – there was not.

Q. PLEASE EXPLAIN.

A. The letter of notification sent by Mr. Reggie Golden to the corporation members, of the Monday, January 29, 2007 special meeting, was dated December 26, 2006. The envelope delivered by the U.S. Postal Service, containing this letter of notification, was postmarked January 18, 2007 PM 2 T. CO Schedule 3.

Q. HOW CAN THIS BE EXPLAINED?

A. The date on the letter of notification by Mr. Reggie Golden, can be "back-dated." U.S. Postal Service postmarks, can not be altered.

Q. WHAT DOES THIS MEAN?

A. This meeting was NOT legal or legitimate. Therefore the vote within the meeting to transfer the utility assets, dissolve the corporation, and poll a majority support for the 393 Companies, was NOT legal or legitimate.

Q. CAN YOU EXPAND ON THIS ISSUE?

A. Yes – as previously mentioned in my Direct Testimony and my Rebuttal Testimony, this lack of notice, combined with the fact that the bylaws of the 393 Companies and the Asset transfer agreement, were only made available to residents three, (3), days prior to the vote that was held at the special meeting of the BIHOA. Therefore, residents were NOT allowed to cast an informed vote.

Q. ARE THERE OTHER ISSUES CONCERNING THE VOTE TO TRANSFER ASSETS THAT WAS CONDUCTED?

A. Yes. As stated in my Direct Testimony and my Rebuttal Testimony, the voting process, as well as the tabulation of the votes, are also in question. The validity concerning the voting process and the tabulation of the votes, was immediately expressed to PSC staff personnel, Dale Johansen and Jim Merciel, in an exchange of E-mails between Complainants, Cindy Fortney, Benjamin Pugh, and myself, and included, Lewis Mills, (Office of Public Counsel). The developer, Folsom Ridge, controls the vote of the BIHOA, by the voting of lots. At the Special Meeting, Folsom Ridge voted approximately 250 lots; there are only approximately 104 Big Island property owners. Therefore, no property owner on Big Island, member or nonmember in the BIHOA, had control over the vote to transfer their utility assets – except the property owner members, Folsom Ridge. In addition, the poll to determine a majority support for the 393 Companies, was tied to the vote to transfer the assets of the utility. Both issues appeared on the same ballot proxy, therefore making this vote also not legitimate. Furthermore, as previously stated in my other testimonies, as well as stated earlier in this testimony, residents were not provided copies of the 393 Companies' by-laws or the asset transfer agreement. The 393 Companies' by-laws were made available to only those individuals with internet access, three, (3), days prior to the vote. Moreover, Ms. Holstead's misrepresented cost of a regulated utility, and her portrayal of water meters associated with PSC regulation, suggests that the

information that was provided to residents was prejudiced. Residents were not allowed to cast an informed vote. In an E-mail dated May, 11, 2006, sent to residents by Ms. Holstead, Ms. Holstead stated to residents: "If it is decided that our utilities are going to be PSC regulated, I strongly oppose any requirement by the PSC that water meters be required for each household. This would be an additional unnecessary and unwarranted expense that would ultimately be charged back to each homeowner."

REFERENCE TESTIMONIES OF MICHAEL T. MCDUFFEY

Q. WHAT TESTIMONIES PROVIDED BY MR. MCDUFFEY, WILL YOU BE REFERENCING?

A. The first testimony I would like to reference is the June 6th, 2006 live testimony provided by Mr. McDuffey at the Public Hearing held in Camden County.

Q. SPECIFICALLY, WHAT PORTION OF MR. MCDUFFEY'S TESTIMONY WILL YOU BE MAKING REFERENCE TO?

A. Those statements regarding the water sampling performed by Mr. McDuffey at the Big Island utility.

Q. WHAT ARE THOSE STATEMENTS?

A. The following are statements made by Mr. McDuffey, regarding water sampling: "I'm currently the operator in charge of the drinking water system for Big Island. I tested water from any number of different homes in this system. They have all been good. I don't know what the group means when they're saying that there's been samples illegally or not properly. All the drinking water samples

for our history, however long I've been doing it, and the wastewater have been in compliance with the Department of Natural Resources regulations."

Q. WHEN QUESTIONED ABOUT NOTICES OF VIOLATION SENT TO FOLSOM RIDGE FROM THE DNR REGARDING ISSUES THAT WOULD BE WITHIN MR. MCDUFFEY'S AREAS OF RESPONSIBILITY HE WAS ASKED IF HE WAS MADE AWARE OF THOSE VIOLATIONS. WHAT WAS HIS RESPONSE?

A. Mr. McDuffey replied: 'Yeah. We would probably get that before Folsom.'

Q. WHEN ASKED IF MR. MCDUFFEY WAS AWARE OF NOTICES OF VIOLATIONS OF MISSOURI SAFE DRINKING WATER REGULATIONS ISSUED TO MR. REGGIE GOLDEN OF FOLSOM RIDGE ON JUNE 28TH, 2005, BY CYNTHIA S. DAVIES, CHIEF WATER SECTION OF THE DNR, WHAT WAS HIS RESPONSE?

A. "I am not aware of what you mean by improper water sampling, ma'am. I really don't. I'm sure that have a copy of that letter."

Q. WHAT WERE THE VIOLATIONS OF THE MISSOURI SAFE DRINKING WATER REGULATIONS ISSUED TO MR. REGGIE GOLDEN OF FOLSOM RIDGE?

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

2. The public water system dispensed water without obtaining a written permit to dispense water in violation of Safe Drinking Water Regulation 10 CSR 60-3.010

3. The public water system failed to develop a written total coliform bacteria sample site sampling plan as required by Safe Drinking Water Regulation 10 CSR 60-4.020(1)(A)

4. The public water system failed to obtain written authorization from the department prior to construction, alteration, or extension of the water system in violation of Safe Drinking Water Regulation 10 CSR 60-3.010(1)

5. Also noted were the following deficiencies, that the public water system should give serious consideration to correction. The deficiencies are not normally subject to enforcement action unless the department determines that these are contributing to the failure of the public water system to provide an adequate volume of safe water to customers at sufficient pressure.

a. The well casing was not protected against physical damage as required by the Design Guide, Part 3.2.7.3.a.7.

b. Each service connection is not individually metered as recommended by Design Guide, Part 8.10.

Q. WHAT OTHER TESTIMONY PROVIDED BY MR. MCDUFFEY WOULD YOU LIKE TO ADDRESS?

A. I would like to address the surrebuttal testimony provided by Mr. McDuffey in case no. WA-2006-0480.

Q. WHAT STATEMENTS WERE MADE BY MR. MCDUFFEY REGARDING THE NOTICES OF VIOLATIONS ISSUED ON JUNE 28, 2005?

A. Mr. McDuffey testifies: "Ms. Orler's testimony on this prompted me to review the records in our offices, and it appears that there was no notice of violation in June of 2005 about a site sampling plan." "My laboratory regularly collected the samples required and had submitted the sample siting plan to DNR on a timely basis. DNR had misplaced the records of the sampling and the sampling siting plan."

Q. DID MR. MCDUFFEY ALSO ADDRESS THE FACT THAT THE SYSTEM HAD NOT OBTAINED A WRITTEN PERMIT TO DISPENSE WATER?

A. Yes – he stated: "It was true that none had been applied for at that time."

Q. CAN YOU PROVIDE SUPPORT DOCUMENTATION AS EVIDENCE TO SUPPORT THE STATEMENTS IN YOUR SURREBUTTAL TESTIMONY?

A. Yes – this will be provided at the Formal Evidentiary Hearing.

Q. DO YOU AGREE WITH THE SURREBUTTAL TESTIMONY OF MR. BENJAMIN D. PUGH?

A. Yes – I do.

Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

A. Yes.