

FILED²

APR 02 2007

Missouri Public
Service Commission

DIRECT TESTIMONY

OF

Cathy JO Orler

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

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

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

3 **Q. WHEN DID YOU MOVE TO BIG ISLAND?**

4 A. I have been a Big Island property owner since 1999. I've been a permanent resident since 2000.

5 **Q. WHAT IS YOUR EMPLOYMENT EXPERIENCE?**

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

10 **Q. WHY ARE YOU PROVIDING TESTIMONY?**

11 A. My personal interests in the issues before the Missouri Public Service Commission (MPSC) are to
12 ensure that my property value appreciates, relative to the market trends within the economy, and not
13 be adversely affected and/or dictated by the water and sewer utility's incorrect installation and/or
14 improper operation, mismanagement and misadministration. I want to protect the assets of my
15 personal property, which are the tangible, physical, water and sewer taps located on my private
16 property, that remain with my property title, and ensure my reserved right of future connection to the
17 utility with no additional, conditional requirement of membership in any organization, to be able to
18 receive utility service, as per the agreement with Mr. Golden and Mr. Rusaw of Folsom Ridge, LLC
19 (F. R.), at the time of my tap purchases. Additionally, I want to protect my financial investment in

2

Orler Exhibit No. 1
Case No(s) WC-2006-0082, et al
Date 2-28-07 Rptr KF

1 the utility, (which is identified by the purchase of my water and sewer taps), against the continued
2 negligence of Mr. Golden and Mr. Rusaw in their repeated violations of the laws of the state of
3 Missouri governing the construction and operations and management and administration of this
4 utility. Moreover, in addition to protecting my financial investment in the utility, I also want to
5 protect myself and my property against the liabilities associated with this utility, by objecting to the
6 transfer of my utility assets to an unregulated entity. The 393 Not for Profit Water and Sewer
7 Corporations, are unregulated entities, that are imposing membership as a conditional and additional
8 requirement to now, be able to receive utility service; with the transfer of utility assets to the 393 Not
9 for Profit Water and Sewer Corporations, and their imposed membership, the liabilities associated
10 with this utility, are also imposed upon their members. I am objecting to the imposed membership of
11 the unregulated, 393 Not for Profit Water and Sewer Corporations, an additional, and conditional
12 requirement, to be able to receive utility service; and, am therefore, also objecting to the liabilities
13 associated with this utility system, being imposed upon me, through this forced membership

14 **Q. ARE THERE OTHER REASONS THAT YOU ARE PROVIDING TESTIMONY?**

15 A. Yes. I feel it is in the best interests of the public being served, and to ensure that safe and adequate
16 water and sewer utility service, can be administered effectively and efficiently, now and in the future,
17 that the Commission deny the transfer of utility assets to a non regulated, not for profit, 393
18 Corporation, and provide utility service to the residents of Big Island through regulation by the
19 Missouri Public Service Commission, (MPSC). The regulation of this utility, will be serving the
20 public's best interests to protect the appreciation of property values from being adversely affected,
21 inhibited and/or dictated by a lack of success in the operations, management and administration of
22 the water and sewer utility, by an unregulated entity.

1 **Q. PLEASE BRIEFLY SUMMARIZE YOUR DIRECT TESTIMONY?**

2 A. I was one of 9 Complainants in case no. WC-2006-0082, et al. who filed a Formal Complaint with
3 the Missouri Public Service Commission, against Folsom Ridge, LLC., Owning and Controlling the
4 Big Island Homeowners' Association, (a.k.a. – Big Island Water and Sewer Association). The
5 Complainants' requests to the Commission, for relief to the issues of the Big Island's water and
6 sewer utility's incorrect construction and installation, and its improper operation, management and
7 administration by the developer, Folsom Ridge LLC., was for a regulated public utility, by a
8 certificated company and/or individual, with no association and/or affiliation with Folsom Ridge,
9 LLC., (Mr. Golden and Mr. Rusaw), or its representatives or associates. Because the Commission
10 lacks jurisdiction over the construction, maintenance, and operation, (including service, rates,
11 accounting and management), of the facilities owned by unregulated, nonprofit associations, and
12 because this utility has not been subject to regulation, these many utility issues exist. Therefore, it is
13 in the public's best interests to ensure that safe and adequate utility service can be provided
14 effectively and efficiently in the future, that this utility become regulated.

15 **Q. ARE YOU A MEMBER OF THE BIHOA AT 3252 BIG ISLAND DRIVE?**

16 A. No, I never signed the ratification document of the Amended and Restated Covenants and Conditions
17 of the Big Island Homeowners' Association.

18 **Q. ARE THERE OTHER RESIDENTS OF BIG ISLAND, WHO ARE BEING BILLED AND/OR**
19 **BEING SERVICED BY THE BIHOA WHO ARE NOT MEMBERS?**

20 A. Yes – approximately 43. Since numerous requests to Folsom Ridge, LLC., and the BIHOA,
21 (including two Orders from the Commission, compelling the production of the records), for copies of
22 ratification documents signed by residents indicating their mutual agreement and consent to

1 membership in the BIHOA have not been honored and these documents provided, my informal count
2 is approximately forty three, (43).

3 **Q. OBVIOUSLY, WITH THE SIGNIFICANT NUMBER STATED ABOVE, THERE HAVE**
4 **BEEN OTHER BIG ISLAND RESIDENTS WHO WERE CONCERNED**
5 **ABOUT THE REQUIREMENT OF MEMBERSHIP IN THE BIHOA AS AN ADDITIONAL**
6 **CONDITION TO RECEIVE UTILITY SERVICE THAT WAS NOT A PART OF THE**
7 **ORIGINAL AGREEMENT WHEN WATER AND/OR SEWER TAPS WERE**
8 **PURCHASED FROM FOLSOM RIDGE, LLC.?**

9 **A.** Yes, referencing the Escrow Agreement, which was the contractual agreement provided by Folsom
10 Ridge, LLC., to residents who purchased taps, letters written to Central Bank of Lake of the Ozarks,
11 state the residents' concerns with the release of the utility funds, and obligations made to residents by
12 Folsom Ridge, LLC., not being met.

13 **Q. DID RESIDENTS HIRE ATTORNEYS TO REPRESENT THEIR ISSUES OF**
14 **CONCERN TO MR. GOLDEN AND MR. RUSAW?**

15 **A.** Yes.

16 **Q. WHAT WERE THE LEGAL OPINIONS RENDERED AS DETERMINATION**
17 **REGARDING THESE ISSUES?**

18 **A.** 1. Property owners having paid money into escrow have a right to connect to the water and sewer

1 utility whether or not they have ratified any restrictive covenants which are now being made an
2 additional requirement.

3 2. Residents have several concerns regarding the "Declaration of Covenants and Conditions" sent to
4 them with the demand that they ratify such covenants or forfeit their right to connect to the
5 utility.

6 3. The system is presently supposed to be able to service 80 homes without further modification.
7 when further modification is necessary this cost should be proportioned among the new users,
8 not the ones already entitled to use the system.

9 4. The developer or BIHOA is contractually obligated to provide utility services to those property
10 owners who paid in advance their tap(s) and utility service connection(s).

11 5. The fact that FR (BIHOA) made commitments to non-members to receive utility service is proof
12 that the BIHOA is violating DNR rules and provisions of it's license and should be certified
13 and regulated by the MPSC.

14 6. The BIHOA is operating as an unlicensed public utility by providing utility service to non-
15 members.

1 **Q. WHY DID MR. GOLDEN AND MR. RUSAW CHOOSE NOT TO BECOME CERTIFIED**
2 **AS A LICENSED PUBLIC UTILITY AT THE TIME THESE LEGAL OPINIONS WERE**
3 **RENDERED?**

4 A. Mr. McElyea advised Mr. Golden to "consider" individuals members, who were not members.

5 **Q. HOW DO YOU KNOW THAT MR. GOLDEN WAS ADVISED BY MR. MCELYEA TO**
6 **"AVOID RUNNING AFOUL OF THE MPSC" TO "CONSIDER" INDIVIDUALS,**
7 **MEMBERS OF THE BIHOA?**

8 A. I have a copy of the letter sent from Mr. McElyea to Mr. Golden, stating such.

9 **Q. WERE YOU EVER COERCED OR INTIMIDATED BY FOLSOM RIDGE, LLC**
10 **AND/OR BIHOA?**

11 A. Yes, I was threatened and intimidated by Mr. Golden, Mr. Rusaw, and Mr. McElyea at the BIHOA
12 members meeting I attended in May of 2005. Mr. Golden, Mr. Rusaw, and Mr. McElyea stated that
13 the corrected installation of my water line, as mandated by the Attorney General's Office and the
14 DNR in the Settlement Agreement, would not be done, unless I paid back fees associated with my
15 tap purchases to the BIHOA. At that time, and Mr. Stan Zeldon, Big Island resident who holds a
16 board position on the BIHOA, said he would negotiate with Mr. Golden and Mr. Rusaw regarding
17 the amount I owed, if I would consent to membership, and started paying fees at that time. Cindy
18 Fortney and I were singled out of the group of attendees, by Mr. Rusaw's statement before the group,
19 that we were the only one's not paying these fees. I later asked Mr. Rusaw to prove this statement
20 with support documentation such as billing records, and/or membership information. None was
21 provided. I then referenced conversations I had had with the DNR concerning my water line

1 reinstallation being contingent on the payment of fees, and clarified to Mr. Golden, Mr. Rusaw, and
2 Mr. McElyea, that this corrected reinstallation was required by DNR to meet state regulations, and
3 fees could not be imposed as a requirement and/or qualification for a correctly installed water line. I
4 then emphasized to Mr. Golden, the potential health risks that were involved by not correctly
5 installing the water line, and Mr. Golden stated to me that he had taken care of this issue by
6 disconnecting my existing water line. I was being threatened and intimidated to pay fees and join the
7 BIHOA.

8 **Q. HAS MR. GOLDEN OR MR. RUSAW SHOWN ANY WILLINGNESS TO**
9 **COOPERATE WITH YOU OR OTHER RESIDENTS AND/OR THE MPSC WITH**
10 **REGARD TO THE ISSUES OF BIHOA MEMBERSHIP, BY HONORING THE**
11 **REQUESTS OF INDIVIDUAL RESIDENTS AND/OR ORDERS BY THE**
12 **COMMISSION, COMPELLING THE PRODUCTION OF MEMBERSHIP DOCUMENTS**
13 **AND BILLING INFORMATION?**

14 A. No.

15 **Q. WHAT DOCUMENTATION HAS BEEN REQUESTED?**

16 A. The following documents have been requested:

- 17 1. A BIHOA membership listing of individual members; exclusive to the BIHOA and the members
18 of that organization specifically, and not combined with any other document and/or listing of
19 individuals for any purpose, other than the listing of members in the BIHOA.
20 2. Signed copies of the ratification documents of the "Amended and Restated Covenants and

1 Conditions,” bearing the signatures of the individuals agreeing to the terms of such Covenants.

2 3. Copies of individual bills, billing statements, invoices, assessments and/or any communications

3 Requesting the payment of fees, dues, assessments, rates; or any service and/or product

4 associated with the water and sewer utility, for which a monetary sum is being charged, and

5 payment is expected. These documents also included any requests for payment of “hook-up”

6 fees, and/or connection fees. These documents requested, were for the years beginning

7 January 01, 2000; January 01, 2001; January 01, 2002; January 01, 2003; January 01, 2004;

8 January 01, 2005; and January 01, 2006 to the date of the request, and included notices sent

9 To individuals in the years 2000 and 2001, for all periods prior to the year 2000.

10 **Q. WERE ALL EFFORTS IN ATTEMPTED NEGOTIATIONS WITH MR. GOLDEN**
11 **AND MR. RUSAW OF FOLSOM RIDGE, LLC. TOWARDS A RESOLVE TO**
12 **UTILITY ISSUES EXHAUSTED PRIOR TO YOU FILING A FORMAL**
13 **COMPLAINT WITH THE MPSC?**

14 **A. Yes**

15 **Q. WHAT WAS THE FINAL DETERMINING FACTOR THAT PROMPTED THE**
16 **FILING OF YOUR FORMAL COMPLAINT WITH THE MPSC?**

1 A. After nearly seven, (7), years of ongoing controversy between Big Island residents and the developer,
2 Folsom Ridge, LLC., I was threatened, intimidated and harassed with the threat of a lawsuit for
3 erroneous back fees allegedly owed to the BIHOA.

4 **Q. ARE YOU CONTINUING TO BE BILLED BY THE BIHOA AS A NON-MEMBER**
5 **FOR NO SERVICE RECEIVED AND NOT BEING CONNECTED TO THE**
6 **UTILITY?**

7 A. Yes.

8 **Q. IS THE BIHOA BEING OWNED AND CONTROLLED BY THE DEVELOPER, FOLSOM**
9 **RIDGE, LLC.,?**

10 A. Yes.

11 **Q. PLEASE EXPLAIN?**

12 A. The Amended and Restated Declaration of Covenants and Conditions governing the BIHOA, (written
13 and adopted by the developer, Folsom Ridge, LLC.), designates that Folsom Ridge, LLC., or its
14 successors, shall be entitled to appoint three, (3), directors to the five, (5), member "Board of
15 Directors," which is the governing body of the Association. In addition, the voting class of the
16 Association, shall be all Owners and shall be entitled to one vote for each lot owned. Therefore, the
17 ownership and control of the BIHOA. is by the developer, Folsom Ridge, LLC..

18 **Q. ARE NON-MEMBERS OF THE ASSOCIATION, PRESENTLY BEING**
19 **BILLED AND/OR SERVICED?**

20 A. Yes

1 **Q. IS THE BILLING AND SERVICING OF NONMEMBERS, IN COMPLIANCE WITH THE**
2 **MISSOURI PUBLIC SERVICE COMMISSION LAW?**

3 A. No.

4 **Q. IS THE BILLING AND SERVICING OF NONMEMBERS, IN COMPLIANCE WITH THE**
5 **REGULATIONS OF THE DNR, WHICH CURRENTLY HAS JURISDICTION OVER THE**
6 **UTILITY?**

7 A. No.

8 **Q. WHAT QUALIFICATIONS AND/OR PREVIOUS PROFESSIONAL EXPERENICIES**
9 **DO EITHER MR. GOLDEN AND/OR RICK RUSAW HAVE IN OWNING,**
10 **OPERATING AND MANAGING A WATER AND SEWER UTILITY?**

11 A. According to their biographies, none. All of the Big Island Water and Sewer utility issues presently
12 before the Commission, and those that must be addressed in the jurisdiction of civil court, are a result
13 of Mr. Golden's and Mr. Rusaw's inabilities at attempted utility ownership, operation, and
14 management. Some of the issues created in this unsuccessful attempt, are listed in chronological
15 order:

- 16 1. Mr. Golden solicited existing property owners to purchase a water tap for \$2,000.00 and/or a
17 sewer tap for \$4,800.00. The funds generated from the tap sales/purchases, bankrolled and cash
18 flowed the construction of the utility, and as per the PSC staff findings, has resulted in an excess
19 surplus Contribution in Aid of Construction, (CIAC), amount to be refunded to residents. This

1 agreement entitled tap purchasers a guaranteed future right of connection to the utility, with no
2 additional charges until their time of connection, at which point they would be charged for the
3 service(s) received. There were no requirements and/or conditions of membership in any
4 organization, as a stipulation to receive service, because the BIHOA did not become a
5 functioning organization until almost 2, (two), years later.

6 2. Incorrect utility construction/installation.

7 3. Individuals who had purchased taps, as well as individuals who purchased property from Folsom
8 Ridge, were connected to the utility

9 4. Oversubscription to the utility

10 5. The Big Island Homeowners' Association was NOT established until 2 years later.

11 6. The BIHOA is controlled by Folsom Ridge through the voting of lots and by the majority of
12 board representation.

13 7. Folsom Ridge subsidizes the utility's operation; the utility rate structure is artificially low, and
14 does not allow for the accrual of a capital reserve fund.

15 8. Because the BIHOA was not organized and functional at the time that the tap agreements were
16 made, and/or at the time individuals were connected to the utility, many individuals who are

1 NOT members, are being billed and/or serviced.

2 9. Mr. Golden and Mr. Rusaw, have threatened , intimidated, and coursed individuals into joining
3 the BIHOA.

4 10. Real estate transactions were interrupted and impeded by Mr. McElyea, under the pretense
5 that erroneous membership fees were due before the properties could be closed on. Mr.
6 McElyea tried to halt these closings by demanding that fees be paid, and membership
7 signatures be obtained. These properties were not Folsom Ridge properties, and were not
8 governed by the covenants and conditions of Folsom Ridge properties. (Ref: Cindy Fortney
9 testimony).

10 11. Numerous DNR violations, some repeat violations have been committed throughout the
11 construction of the utility; and continuing into the present. (Refer to the Benjamin D. Pugh
12 Testimony).

13 12. Mr. Golden and Mr. Rusaw made many commitments to residents under signature, but have not
14 obligated themselves to those commitments.

15 **Q. HOW LONG HAVE ISSUES ASSOCIATED WITH THIS UTILITY, AND THE SITUATION**
16 **INVOLVING THE DEVELOPER, FOLSOM RIDGE, LLC., BEEN IN EXISTENCE ON**
17 **BIG ISLAND?**

1 A. Since 1998 and continuing into the present.

2 Q. WHAT HAS BEEN THE REQUESTED FORM OF RELIEF BY THE COMPLAINANTS IN
3 THIS CASE, TO THE COMMISSION, AS A MEANS OF ADDRESSING, CORRECTING,
4 AND RESOLVING THE UTILITY ISSUES ON BIG ISLAND?

5 A. A regulated public utility, operated, managed, and administered by a certificated individual and/or
6 company, with no association and/or affiliation with Mr. Golden or Mr., Rusaw, or Folsom Ridge,
7 LLC., and/or its agents or representatives. In the Application case. Number Wa-2006-0480 et al.,
8 Complainants and Interveners provided the Commission with a letter of acceptance to the
9 appointment of receiver to the water and sewer utility on Big Island, from Mr. Gary Cover.
10 Complainants and Interveners made clear to the Commission, that they were not asking that the
11 ownership of the utility assets be removed from Mr. Golden and Mr. Rusaw, only the responsibilities
12 of operation, management, and administration of the utility and its services.

13 Q. DO YOU REALIZE AND UNDERSTAND, THAT FOR THE COMMISSION TO APPOINT
14 A RECEIVER TO OPERATE, MANAGE, AND ADMINISTER THE WATER AND
15 SEWER UTILITY ON BIG ISLAND, WOULD REQUIRE THE COMMISSION TO
16 ESTABLISH A PRECEDENCE IN THIS CASE?

17 A. Yes.

18 Q. HAVE YOU AND OTHER COMPLAINANTS IN THIS CASE, BEEN ADVISED BY THE
19 OFFICE OF PUBLIC COUNSEL AND STAFF OF THE PSC, NOT TO MAKE THE
20 REQUEST TO THE COMMISSION TO APPOINT A RECEIVER?

1 A. Yes.

2 **Q. HAVE YOU ASKED FOR CLARIFICATION FROM THE COMMISSION REGARDING**
3 **THIS REQUEST, IN THE PLEADINGS THAT HAVE BEEN FILED WITH THE**
4 **COMMISSION IN THIS CASE AND THE VARIOUS OTHER CASE NUMBERS THAT**
5 **HAVE RESULTED FROM THIS ORIGINAL COMPLAINT CASE?**

6 A. Yes.

7 **Q. HAS THE COMMISSION PROVIDED THE CLARIFICATION REQUESTED IN THIS**
8 **MATTER?**

9 A. No.

10 **Q. WHY DO YOU FEEL THAT A RECEIVER IS NECESSARY TO OPERATE, MANAGE**
11 **AND ADMINISTER THE WATER AND SEWER UTILITY ON BIG ISLAND, IF THE**
12 **UTILITY IS REGULATED BY THE MPSC?**

13 A. Yes. All of the documentation provided to the Commission, including that provided by the
14 respondents and associated with the respondents in the form of direct testimonies and rebuttal and
15 surrebuttal testimonies, during the past eighteen, (18), months that this case and the resulting cases
16 have been before the Commission, supports the blatant disregard, lack of respect, and general
17 contempt this developer, Folsom Ridge, LLC., has demonstrated for the governing jurisdictions of
18 the DNR and the MPSC, by continuing to be in violation the laws of the state of Missouri. The
19 Commission has been unable to provide Complainants or other residents of Big Island, that
20 certifying Folsom Ridge would guarantee that safe and adequate utility service will be provided.

1 **Q. DO YOU HAVE ANY RECOMMENDATIONS TO THE COMMISSION, AS AN**
2 **ALTERNATIVE TO THE APPOINTMENT OF A RECEIVER?**

3 A. Yes.

4 **Q. PLEASE EXPLAIN?**

5 A. If granting a Certificate of Convenience and Necessity to Mr. Golden and Mr. Rusaw, the Commission
6 should impose very strict conditions as a stipulation to certificating these individuals and any newly
7 created legal entity they represent.

8 A. **IS THERE ANOTHER AVAILABLE OPTION, (OTHER THAN REGULATION),**
9 **FOR THE OWNERSHIP, OPERATION, MANAGEMENT, AND ADMINISTRATION**
10 **OF THIS UTILITY.**

11 A. Yes. Just recently, a group of residents opposing the regulation of this utility, formed a 393 not for
12 profit sewer corporation and a 393 not for profit water corporation, and are in the process of
13 negotiating the transfer of the utility assets to the 393 corporations.

14 **Q. DO YOU FEEL THAT THE 393 NOT FOR PROFIT SEWER CORPORATION AND**
15 **THE 393 NOT FOR PROFIT WATER CORPORATION, IS A REMEDY TO THE**
16 **UTILITY ISSUES THAT CURRENTLY EXIST.**

17 A. No.

18 **Q. PLEASE EXPLAIN?**

19 A. The utility's substandard construction, operation, management, and administration, are merely being
20 transferred from one unregulated entity, to another unregulated entity. The utility issues are not

1 being addressed, corrected, or resolved. In addition, as the basis of all of the Formal Complaints
2 filed, the Complainants stated that agreements made with the developer, Folsom Ridge, to receive
3 utility service, did not include membership in any organization and/or association. However,
4 membership was now being imposed, as an additional and conditional requirement to be able to
5 continue to receive utility service, and obligating them to the liabilities associated with the utility.
6 The transfer of utility assets to the 393 companies, is also a transfer of the utility's liabilities to the
7 393 companies; and imposing membership as an additional and conditional requirement to be able to
8 continue to receive utility service; thus obligating its members to the liabilities associated with the
9 utility. If the Commission approves the transfer of utility assets to the 393 Not for Profit Companies,
10 the Commission will be facilitating litigation suits being filed immediately against the 393
11 Companies; the utility issues on Big Island would remain unchanged; the Formal Complaints filed
12 with the PSC, would not be satisfied; and safe and adequate utility service, would NOT be provided,
13 effectively and efficiently, to the residents of Big Island.

14 **Q. HOW DO YOU KNOW THIS?**

15 A. In a written statement to residents, provided by Ms. Pamela Holstead, self appointed President of the
16 393 not for profit Big Island Water Company and the 393 not for profit Big Island Sewer Company,
17 Ms. Holstead affirms that "A condition of the transfer is that the system is transferred " AS IS."

18 **Q. WITHOUT REGULATION, DO YOU FEEL THE 393 NOT FOR PROFIT**
19 **COMPANIES, HAVE THE CAPABILITIES TO ADDRESS, CORRECT AND**
20 **RESOLVE THE UTILITY ISSUES, SPANNING NEARLY 8 YEARS?**

21 A. No. It is clear that by accepting the system "AS IS," as a condition of the transfer, that the 393 not
22 for profit companies have no desire or intent to correct the utility issues.

1 **Q. CAN YOU FURTHER EXPLAIN?**

2 A. Ms. Holstead and her appointed Board of Directors for the companies, have been, and are presently
3 members of the existing Big Island Water and Sewer Association, (a.k.a. – BIHOA). As members in
4 the existing HOA, (with one individual maintaining a board position), none of these individuals have
5 taken any initiative towards a resolve to any of the ongoing utility issues in the case currently before
6 the Commission, including the acceptance of the system, “AS IS,” as a condition of the transfer to
7 the 393 companies. Furthermore, in a communication from Ms. Holstead to residents, Ms. Holstead
8 states that, “...no customer who has filed complaints against the developer would serve on the first
9 Board of Directors.” In addition, in an E-mail sent to residents by Ms. Holstead, she asserts that she
10 “...believes the PSC guidelines should instead provide one vote per lot which would allow the
11 developer to maintain control over the utilities.” Again, in Ms. Holstead’s written testimony
12 submitted at the public hearing in the complaint case held on June 02, 2006, Ms Holstead testifies
13 that she “...believes the PSC guidelines should be altered to allow one vote per lot instead of one
14 vote per customer, as I believe that is in the public’s best interest.” Also as a part of Ms. Holstead’s
15 testimony, is her statement: “There are those who believe Mr. Pugh,” (complainant and intervener),
16 “will be satisfied by nothing less than a public hanging of the developer. PSC has become the rope.”

17 I strongly believe it is in the public’s best interests that this utility be regulated, to be independent of
18 the developer, with a jurisdictional entity governing the utility’s operations and administration, that is
19 neutral to the developer.

20 **Q. DO YOU FEEL THAT THE 393 COMPANIES’ APPOINTED BOARD OF DIRECTORS IS A**
21 **FAIR AND IMPARTIAL REPRESENTATION OF, FOR, AND TO THE BIG ISLAND**
22 **RESIDENTS AND ITS UTILITY CUSTOMERS?**

1 A. No. Ms. Holstead's statements, noted in the preceding questions and answers, indicate that she is
2 biased towards the developer, and is not neutral to her self appointed position of Board President and
3 the responsibilities of that position in relationship to the utility and the customers it serves.
4 Furthermore, all of the appointed 393 Board of Directors have purchased properties from the
5 developer. In addition, Ms. Holstead has stated that "All Directors must be a customer of both the
6 water company and the sewer company." This requirement, prevents and excludes any sewer
7 customer utilizing a private well from holding a board position. This is discrimination.

8 **Q. WITHOUT REGULATION, DO YOU FEEL THE 393 NOT FOR PROFIT**
9 **COMPANIES, HAVE THE CAPABILITIES TO ADDRESS, CORRECT, AND**
10 **RESOLVE THE OPERATIONAL AND MANAGEMENT ACCOUNTING**
11 **DESCREPANCIES?**

12 A. No. "A condition of the transfer is that the system is transferred AS IS."

13 **Q. IS THER A CAPITAL RESERVE BEING ACQUIRED BY THE 393 NOT FOR**
14 **PROFIT COMPANIES, AS A PART OF THE ASSETS BEING TRANSFERRED?**

15 A. No. Ms. Holstead confirms that, "The 393 Companies have no money at this time." Ms. Holstead
16 further explains, "...the company would borrow money for repairs and make loan payments out of
17 regular income."

18 **Q. SINCE CASE NUMBER WO-2007-0277 INVOLVING THE TRANSFER OF UTILITY**
19 **ASSETS TO THE UNREGULATED, 393 NOT FOR PROFIT COMPANIES IS A PART OF**
20 **THIS PROCEDURAL SCHEDULE IN THIS CASE, AND THE APPLICATION CASE**

NUMBER WA-2006-0480 HAS BEEN WITHDRAWN AND DISMISSED, WHY ARE YOU

STILL MAKING REFERENCE TO A REGULATED UTILITY ON BIG ISLAND?

A. Because the mere transfer of utility assets to yet another unregulated, membership organization, does not address, correct, or resolve any of the utility issues as outlined in the Formal Complaints, and does not guarantee that safe and adequate utility service can be provided. Furthermore, if the Commission approves the transfer of utility assets to the unregulated, Not for Profit 393 Companies, the Commission will be facilitating litigation suits that will be filed immediately against the 393 Companies, as a result of the forced membership in the 393 Companies now being an additional and conditional requirement to be able to continue to receive utility service, and the liabilities associated with this utility being imposed on individuals through the requirement of this membership.

**Q. DID FOLSOM RIDGE PLAT THE CENTER OF THE ISLAND TO ESTABLISH A
BASELINE OF DENSITY FOR FUTURE DEVELOPMENT?**

A. No, it was done to protect their property rights as a result of the planning and zoning meeting where Big Island residents opposed the proposed rezoning of Big Island from single family to multi family by Mr. Golden and Mr. Rusaw.

**Q. WHEN WAS THE EXTENSION TO THE ORIGINAL PHASE 1 WATER AND
SEWER UTILITY CONSTRUCTED?**

A. Wastewater construction permit # 26-3390 was issued by the DNR on June 23, 2000 and Waterline extension construction permit # PWS MO 3031265 was issued by the DNR on March 07, 2000.

**Q. IS PHASE 1, OF FOLSOM RIDGE'S DEVELOPMENT ON BIG ISLAND BY
MR. GOLDEN AND MR. RUSAW, AND AS REPRESENTED BY MR. GOLDEN AND MR.**

1 **RUSAW TO RESIDENTS, DNR, AND THE MISSOURI PUBLIC SERVICE**
2 **COMMISSION, THE SAME AS THE PHASE 1 OF THE PUD? ("BIG ISLAND PLANNED**
3 **UNIT DEVELOPMENT").**

4 A. No. Information provided to Big Island residents, DNR, and the MPSC, by Mr. Golden and
5 Mr. Rusaw, representing Folsom Ridge, LLC., states that Phase 1 of Folsom Ridge's Development on
6 Big Island includes these subdivisions only: Portage Park Unit #1, Portage Park Unit #3, Big Island
7 Lakesites, and Big Island Lakesites First Addition.

8 **Q. WAS THE ORIGINAL PHASE 1 WATER AND SEWER UTILITY DESIGNED TO**
9 **SERVICE THE NEWLY FORMED PUD AND/OR THE ISLAND VIEW ESTATES?**

10 A. No, it was to service Big Island Lake Sites, Big Island Lake Sites First Edition, Portage Park Unit 1
11 and Portage Park Unit 3. The original water and sewer utility was not designed to service areas
12 outside these boundaries.

13 **Q. IN THE "BIG ISLAND PLANNED UNIT DEVELOPMENT" (PUD),**
14 **APPLICATION SUBMITTED BY MR. GOLDEN, MR. RUSAW, AND MS.**
15 **BRUNK, TO CAMDEN COUNTY PLANNING AND ZONING, IT STATES THAT,**
16 **"...ALL LOTS AND NEW HOMES WILL BE CONNECTED TO THE COMMUNITY**
17 **WATER AND SANITARY SEWER SYSTEM." HOW CAN THESE LOTS/HOMES**
18 **CONNECT TO THE COMMUNITY WATER AND SEWER SYSTEM, WHEN THE**
19 **AMENDED AND RESTATED COVENANTS AND RESRTICTIONS, DO NOT**
20 **INCLUDE THESE SUBDIVISIONS WITHIN THE BOUNDARIES OF THE WATER**
21 **AND SEWER SYSTEM?**

1 A. Again, Mr. Golden and Mr. Rusaw are in violation of their own restrictions, and have provided
2 incorrect information to the Planning and Zoning Board. Big Island West and Big Island Central, are
3 not within the boundary of the water and sewer utility.

4 Q. DID MR. GOLDEN AND MR. RUSAW, (FOLSM RIDGE), CONNECT OTHER
5 PHASES OF THEIR DEVELOPMENT TO THE PHASE 1 WATER AND SEWER
6 SYSTEM WITHOUT ADDING THE EXPANSION TO THE ORIGINAL SYSTEM AS
7 REQUIRED BY DNR, OR AS COMMITTED TO RESIDENTS?

8 A. Yes

9 Q. WHEN WERE THE RESTRICTIVE COVENANTS OF THE BIG ISLAND HOA
10 RECORDED AND IMPLEMENTED?

11 A. December 29, 2000.

12 Q. WAS THIS DATE BEFORE OR AFTER THE SOLICITATION, SALE AND
13 PURCHASE OF WATER AND SEWER TAPS TO EXISTING RESIDENTS BY MR.
14 LEES, MR. GOLDEN, AND MR. RUSAW OF FOLSOM RIDGE?

15 A. This date was approximately 2 years later.

16 Q. HOW DID FOLSOM RIDGE IMPOSE THE COVENANTS AND RESTRICTIONS OF
17 THE BIG ISLAND HOA AT THE TIME OF SALE, IF PROPERTIES WERE
18 PUCHASED PRIOR TO THE RECORDING OF THE RESTRICTIVE COVENANTS
19 FOR THE BIG ISLAND HOA, IN DECEMBER 2000?

1 A. After the purchase of the properties Folsom Ridge tried to obtain signatures by coercing, threats and
2 intimidation. Some amendments were made to the original covenants and restrictions to entice or
3 attract individuals to sign the ratification document, but many concerns about the language of the
4 documents, still existed.

5 Folsom Ridge corresponded to residents that they would not be allowed to connect to the system in
6 the future unless they ratified these documents. (This is Contrary to original agreement for the sale
7 and purchase of the taps).

8 Recent real estate transactions were interfered with when Mr. McElyea tried to impose membership
9 on individuals during the property closings.

10 **Q. OF THE TOTAL, APPROXIMATE 593 LOTS AVAILABLE FOR PURCHASE, HOW**
11 **MANY LOTS HAVE BEEN SOLD BY FOLSOM RIDGE, SINCE MR. GOLDEN AND MR.**
12 **RUSAW PURCHASED THE UNDEVELOPED LAND ON BIG ISLAND IN 1998?**

13 A. This information has not been provided, however, I think the percentage is relatively small.

14 **Q. WHY IS THIS POINT BEING MADE A PART OF YOUR TESTIMONY?**

15 A. The water and sewer utility on Big Island should be independent of the developer; and therefore, Not
16 dependent on, or adversely affected, inhibited, and/or dictated by the lack of success in Mr. Golden's
17 and Mr. Rusaw's attempted development project on Big Island.

18 **Q. WHAT WAS THE OBJECTIVE OF MR. GOLDEN AND MR. RUSAW, (FOLSOM RIDGE),**
19 **IN PLATTING AND REPLATTING PORTIONS OF LAND IN 2004?**

1 A. According to Mr. Golden, in an e-mail he sent to Mr. Hiley on Friday, May 08, 2004, "...we had no
2 choice but to protect our property rights based on what happened at last week's meeting. While we
3 do not believe this necessarily serves us or you in the best interest. It is truly unfortunate that we
4 were forced to plat the island in this manner."

5 **Q. HAVE MR. GOLDEN AND MR. RUSAW PURCHASED OTHER PROPERTIES**
6 **ASSOCIATED WITH BIG ISLAND THAT HAVE NOT BEEN PURCHASED IN THE**
7 **NAME OF FOLSOM RIDGE?**

8 A. I believe so according to the Secretary of State's website.

9 **Q. DID MR. GOLDEN AND MR. RUSAW REPRESENT TO POTENTIAL BIG ISLAND**
10 **PROPERTY BUYERS, AS STATED IN THE AMENDENAND RESTATED COVENANTS**
11 **AND RESTRICTIONS, THAT THE DEVELOPMENT ON BIG ISLAND WAS A**
12 **PLANNED, SINGLE FAMILY COMMUNITY DEVELOPMENT?**

13 A. Yes.

14 **Q. DID MR. GOLDEN AND MR. RUSAW THEN, LATER CHANGE THE LANGUAGE OF**
15 **THE AMENDEDAND AND RESTATED COVENANTS AND CONDITIONS, AS WELL AS**
16 **THE PRIOR REPRESENTATION MADE, TO NOW EXISTING RESIDENTS THAT**
17 **WERE PREVIOUS PURCHASERS, THAT THE SINGLE FAMILY DEVELOPMENT IN**
18 **WHICH THEY HAD PURCHASED PROPERTY WOULD NOW CONTAIN DUPLEXES,**
19 **TRIPLEXES AND QUADPLEXES, AND THESE MULTI FAMILY STRUCTURES**
20 **WOULD NOW SHARE THE PROPERTY LINE BOUNDARIES OF THE SINGLE**
21 **FAMILY RESIDENCES THESE INDIVIDUALS OWNED?**

1 A. Yes.

2 Q. IS THE WATER AND SEWER UTILITY, CONSTRUCTED BY MR. GOLDEN AND
3 MR. RUSAW, (FOLSOM RIDGE), A PART OF THE NECESSARY
4 INFRASTRUCTURE THAT WAS INSTALLED TO DEVELOP THEIR LAND?

5 A. Yes. As permitted by DNR in the construction permits issued in 1998, the utility was specifically
6 designed and intended to serve a maximum capacity of 80 lots within Phase 1 of the Big Island
7 development; and to include only these subdivisions: Portage Park #1, Portage Park #3, Big Island
8 Lakesites, and Big Island Lakesites First Addition.

9 As defined by DNR in permit conditions: "The eighty houses within the Big Island Development
10 will be considered to be the original existing thirty-six houses along with the construction of forty-
11 four new houses or connections."

12 Q. DID MR. GOLDEN AND MR. RUSAW, REPRESENTING FOLSOM RIDGE, COMMIT TO
13 RESIDENTS, AND DNR, UNDER SIGNATURE, BOUNDARIES TO THE WATER AND
14 SEWER UTILITY SYSTEM OF THE PHASE 1 DEVELOPMENT?

15 A. Yes.

16 Q. ARE BIG ISLAND CENTRAL, BIG ISLAND WEST, AND ISLAND VIEW ESTATES,
17 LOCATED IN THE PHASE 1 OF THE DEVELOPMENT OF BIG ISLAND?

18 A. No.

19 Q. OF WHAT SIGNIFICANCE, ARE THE BOUNDARIES OF THE WATER AND

SEWER UTILITY SYSTEM OF THE PHASE 1 DEVELOPMENT?

A. Mr. Golden and Mr. Rusaw, of Folsom Ridge, under signature, committed to residents, that, "As set out in the newly Amended and Restated Declaration of Covenants and Conditions, Folsom, or its successor, will pay the entire cost and expense of all expansions to the water and sewer system as needed or required by the Missouri Department of Natural Resources to fully serve the land area described in the Amended and Restated Declaration of Covenants and Conditions beyond the original planned 80 homes, which is the maximum number of homes that can be served by the existing water system and sewer system."

Q. WHAT DOES THIS MEAN?

A. Any cost of expansion outside the Phase 1 Development, can not be charged to any resident of the Phase 1 Development, (Portage Park #1, Portage Park #3, Big Island Lakesites, and Big Island Lakesites First Addition). Costs associated with the expansion of the water and/or sewer system, can only be charged as a part of the cost of service, and/or through special assessments, to those residents outside the boundaries of the Phase 1 Development, and/or to residents to whom this commitment was not made. Those residential utility customer addresses outside the boundaries of the Phase 1 Development currently include: 3458 Big Island Drive; 3514 Big Island Drive; 3610 Big Island Drive; the address formerly known as the "day" residence and identified to the Commission as being the lot adjacent to lot # W-19 and serviced by telephone communications box # F11, (there are no house numbers or a mail box at this location to identify an address by number); all of the new, single family attached homes for sale by Folsom Ridge, and the community pool servicing those residences.

1 **Q. HOW DOES FOLSOM RIDGE EXPLAIN AN 8 YEAR DOCUMENTED HISTORY TO**
2 **PRESENT, OF IMPROPERLY CONSTRUCTING THE WATER AND SEWER UTILITY**
3 **SYSTEM, COMBINED WITH ITS IMPROPER MANAGEMENT AND MISOPERATION**
4 **IN ITS MISADMINISTRATION, AND COMMITTING NUMEROUS AND REPEAT DNR**
5 **VIOLATIONS?**

6 A. Mr. Golden and Mr. Rusaw, lack the capabilities necessary to successfully construct, own, operate,
7 and manage effectively and efficiently a water and sewer utility, as proven throughout the past 8
8 years.

9 **Q. IS THIS THE ONLY REAL ESTATE DEVELOPMENT MR. GOLDEN AND MR. RUSAW**
10 **HAVE BEEN INVOLVED IN?**

11 A. No. Lifebridge development in Colorado, is a project involving Mr. Golden and Mr. Rusaw, and the
12 Lifebridge Christian Church where Mr. Golden is a member and Mr. Rusaw is senior minister. There
13 have been some similar concerns raised by residents there, regarding that project. In "Hearing
14 Certification Docket No. 2005-72," dated November 09, 2005, regarding LifeBridge Christian
15 Church, concerned homeowner, "Mr. Gries stated current residents moved to the area for a rural
16 setting and invested significant amounts into their community, and they have property rights."
17 Therefore, the regulation of the water and sewer utility on Big Island, by the MPSC, will be serving
18 the public's best interests to protect the appreciation of property values from being adversely
19 affected, inhibited and/or dictated by a lack of success in the operations, management and
20 administration of the water and sewer utility, by the developer, Folsom Ridge, LLC., and/or an
21 unregulated entity, such as the 393 Not for Profit Water and Sewer Corporations.

1 **Q. DID MR. GOLDEN AND MR. RUSAW REVISE THEIR PUD PLANS TO RESPOND TO**
2 **THE CONCERNS OF THE BIG ISLAND RESIDENTS?**

3 A. Somewhat. Mr. Golden and Mr. Rusaw incorporated the sale of the interior of the island to Big Island
4 residents with their PUD submission to Camden County Planning and Zoning. When residents
5 were not able to afford the purchase of the interior of the island at the inflated price of Mr. Golden
6 and Mr. Rusaw, the PUD was approved. In other words, the sale of the interior of the island
7 by Mr. Golden and Mr. Rusaw to residents, was to be in exchange for, and/or contingent on the
8 proposed PUD that Big Island residents were opposing in Planning and Zoning.

9 **Q. WAS THIS PROPOSED SALE/PURCHASE OF THE INTERIOR OF THE ISLAND TO**
10 **RESIDENTS, FRAUDGELENT IN NATURE?**

11 A. Yes. It was not disclosed to residents that the purchase of the interior of the island would be through
12 a newly created homeowners' association, in which membership would be imposed upon residents
13 with 100% participation. This association would then purchase the interior of the island; if there
14 happened to be members of this association who were not able to afford their proportionate share of
15 the interior purchase, a lien would be attached against their property. In other words, membership in
16 this newly created association would be imposed against the will of many residents, as well as the
17 purchase of the interior of the island, as well as the attachments of liens against the properties of
18 these individuals whom were not in favor of any and/or all of this proposal. The only disclosure

1 made to residents regarding this transaction, was the question: "Would you be interested in
2 purchasing the interior of the island, as a means of preserving green space?"

3 **Q. IF THIS DISCLOSURE WAS NOT MADE TO THE RESIDENTS, HOW IS IT THAT YOU**
4 **ARE AWARE OF IT?**

5 A. I have a copy of a private E-mail sent between Big Island residents Mr. Bill Burford, and Mr. Phil
6 Hiley, and Mr. Rick saw representing Folsom Ridge.

7 **Q. HOW IS IT THAT YOU HAVE A COPY OF THIS PRIVATE E-MAIL IN YOUR**
8 **POSSESSION?**

9 A. At the time, I was co-chair of a group of residents opposing the request of Folsom Ridge to Camden
10 County Planning and Zoning, to rezone Big Island to multi family. Mr. Hiley sat as chair on that
11 same committee. Mr. Hiley had become very upset with Mr. Burford, when Mr. Burford did not
12 follow the instructions he was given by Mr. Hiley, in his meeting with Mr. Rusaw. When I
13 questioned Mr. Hiley regarding his present mood, he threw a copy of the E-mail across the table to
14 me.

15 **Q. WHY DOES THIS HAVE SIGNIFICANCE IN YOUR TESTIMONY?**

16 A. The not for profit 393 Corporations are requesting approval from the Commission, to transfer utility
17 assets to their ownership and control. Mr. Hiley is strongly supporting this request, and Mr. Burford
18 has been appointed to a board position of the 393 nonprofit corporation. As per the Missouri state
19 statutes governing the Nonprofit Sewer Companies, (**Powers** – 393.829 # 7), and Nonprofit Water
20 Companies, (**Powers and Duties** – 393.906 # 7 and # 9), the Nonprofit Companies have the powers

1 "to...purchase...lands, ...and any and all kinds and classes of real or personal property whatsoever,
2 which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the
3 company is organized." In addition, Exhibit C, of the "Agreement for Sale and Transfer of Water
4 Distribution System and Wastewater System." Assets, containing the warranty deeds of *Real Estate*
5 *and Easements* and the *Conveyances of Real Estate*, has not been provided; although many requests
6 to Ms. Holstead, self appointed board President for the 393 Nonprofit Companies, have been made.
7 Therefore, the precedence that has been established by Mr. Hiley, Mr. Burford, and Mr. Rusaw,
8 involving the purchase of the interior of the island through a nonprofit membership organization,
9 promotes question regarding the integrity of the transfer of utility assets to the 393 Nonprofit
10 Corporations.

11 **Q. SPECIFICALLY, WHAT REAL ESTATE IS BEING TRANSFERRED?**

12 **A.** Ms. Holstead has not provided the legal descriptions of the real estate being transferred.

13 **Q. THROUGHOUT THE EIGHTEEN, (18) MONTHS OF THESE PROCEEDINGS BEFORE**
14 **THE COMMISSION, MR. GOLDEN AND MR. RUSAW HAVE DEVOTED A GREAT**
15 **DEAL OF THEIR TESTIMONY TO THE FUTURE DEVELOPMENT OF BIG ISLAND.**
16 **HOWEVER, WHAT RELEVANCY DOES THIS FUTURE DEVELOPMENT HAVE WITH**
17 **RESPECT TO THE ISSUES IN THE COMPLAINT CASES BEFORE THE COMMISSION?**

18 **A.** None. Past behavior dictates future performance. The issues in the cases before the Commission are
19 a direct result of the present and past performance of Mr. Golden and Mr. Rusaw, and their lack of

1 capabilities in an unsuccessful attempt to construct, and effectively and efficiently operate, own,
2 manage and administer a water and sewer utility for nearly eight, (8), years.

3 **Q. HOW DO MR. GOLDEN AND MR. RUSAW EXPLAIN NOT HAVING AN ESTABLISHED**
4 **HOA IN PLACE TO OWN, OPERATE, MAINTAIN AND ADMINISTER THE UTILITY**
5 **AND ITS SERVICES AT THE TIME OF THE SOLICITATION, SALES, AND**
6 **PURCHASES OF THE WATER AND SEWER UTILITY TAPS TO EXISTING**
7 **RESIDENTS, OR AT THE TIME OF CONNECTING RESIDENTS TO THE UTILITY TO**
8 **RECEIVE SERVICE?**

9 **A.** Mr. Golden and Mr. Rusaw, lack the capabilities necessary to successfully construct, own, operate,
10 and manage effectively and efficiently a water and sewer utility, as proven throughout the past 8
11 years.

12 **Q. CAN RESIDENTS OF BIG ISLAND, COMPLAINANTS, AND INTERVENORS PROVIDE**
13 **TESTIMONY AND SUPPORT DOCUMENTATION TO PROVE THAT MR. GOLDEN**
14 **AND MR. RUSAW WERE DIRECTLY INVOLVED WITH THE INITIAL**
15 **CONSTRUCTION OF THE FACILITIES?**

16 **A.** Yes

17 **Q. CAN INTERVENORS AND COMPLAINANTS PROVIDE TESTIMONY AND SUPPORT**
18 **DOCUMENTATION TO INDICATE THAT MR. LEES, MR. GOLDEN, AND MR. RUSAW**
19 **WERE ACTING AS THREE EQUAL MANAGING PARTNERS IN THE BIG ISLAND**
20 **DEVELOPMENT PROJECT?**

1 A. Yes.

2 Q. WERE COMPLAINTS SUBMITTED TO DNR BY BIG ISLAND RESIDENTS REGARDING
3 THE INSTALLATION OF THE WATER AND SEWER LINES ON BIG ISLAND, BEFORE
4 MR. LEES WAS TERMINATED AS A MEMBER OF FOLSOM RIDGE?

5 A. Yes.

6 Q. WAS MR. GOLDEN PERSONALLY MADE AWARE OF THE INCORRECT
7 INSTALLATION OF THE WATER AND SEWER UTILITY LINES BY BIG ISLAND
8 RESIDENTS, BEFORE MR. LEES WAS TERMINATED AS A PARTNER?

9 A. Yes.

10 Q. DID MR. GOLDEN AND MR. RUSAW, UNDER SIGNATURE TO RESIDENTS, VERIFY
11 THE CORRECT INSTALLATION OF THE WATER AND SEWER UTILITY?

12 A. Yes.

13 Q. FOR WHAT PURPOSE AND WHEN, WAS THE BIG ISLAND HOMEOWNERS'
14 ASSOCIATION NAME CHANGED TO THE BIG ISLAND HOMEOWNERS' WATER
15 AND SEWER ASSOCIATION?

16 A. This information has not been provided to residents of Big Island, although numerous requests have
17 been made.

18 Q. WHY DID THE ASSOCIATION NOT BEGIN THE BILLING FOR THE UTILITY
19 SERVICES AS SOON AS INDIVIDUALS WERE CONNECTED?

1 A. Because the association did not exist.

2 **Q. WHO IS THE OWNER OF THE WATER AND SEWER UTILITY ON BIG ISALND?**

3 A. Documents signed by Mr. Golden and/or Mr. Rusaw state that Folsom Ridge owns the water and
4 sewer utility, and other documents signed by Mr. Golden and/or Mr. Rusaw indicate that the BIHOA
5 owns the water and sewer utility.

6 **Q. DOES THIS MEAN THAT MR. GOLDEN AND/OR MR. RUSAW HAVE PROVIDED**
7 **FALSE AND/OR CONFLICTING AND/OR INCORRECT INFORMATION REGARDING**
8 **THE OWNERSHIP OF THIS UTILITY?**

9 A. Yes.

10 **Q. IN NUMEROUS DOCUMENTS FILED WITH THE PSC IN THE COMPLAINT CASE,**
11 **HAVE COMPLAINANTS AND INTERVENORS RAISED THE QUESTION OF**
12 **OWNERSHIP TO THE PSC?**

13 A. Yes.

14 **Q. HAVE COMPLAINANTS AND INTERVENORS REQUESTED COPIES OF PROPERTY**
15 **TITLES TO PROVE OWNERSHIP OF THE UTILITY?**

16 A. Yes.

17 **Q. HAVE THESE DOCUMENTS BEEN SUPPLIED?**

18 A. No.

1 **Q. SINCE THE BIHOA WAS NOT ESTABLISHED WITH A DECLARATION OF COVENANTS**
2 **UNTIL THE YEAR 2000, HOW WERE MR. GOLDEN AND MR. RUSAW ABLE TO**
3 **IMPOSE THE DECLARATION OF COVENANTS AND RESTRICTIONS AT THE TIME**
4 **OF THE SALE OF FOLSOM RIDGE PROPERTIES TO NEW OWNERS?**

5 A. They were not.

6 **Q. WERE THERE SOME BIG ISLAND RESIDENTS WHO DID NOT VOLUNTARILY**
7 **AGREE TO THE TERMS AND CONDITIONS OF THOSE CONENANTS?**

8 A. Yes – as previously stated in my testimony, an informal count is approximately 43.

9 **Q. WERE THERE SOME RESIDENTS WHO WERE THREATENED, INTIMIDATED, AND**
10 **COERESD INTO SIGNING THESE COVENANTS?**

11 A. Yes.

12 **Q. FOR THOSE RESIDENTS WHO REFUSED TO SIGN THESE COVENANTS, DID MR.**
13 **MCELYEA STATE TO MR. GOLDEN IN A LETTER THAT THESE INDIVIDUALS**
14 **SHOULD BE 'CONSIDERED MEMBERS?**

15 A. Yes.

16 **Q. WAS THIS A UNILATTERAL DECISION MADE BETWEEN MR. MCELYEA AND MR.**
17 **GOLDEN, AND NOT A BILATTERAL ARGRRMENT INVOLVING THE MUTUAL**
18 **CONSCENT OF THE RESIDENTUAL HOMEOWNER?**

19 A. Yes.

1 A. No.

2 **Q. IS THERE AN ACCRUED CAPITAL RESERVE WITHIN THE ASSOCIATION?**

3 A. No.

4 **Q. HAVE RESIDENTS OF BIG ISLAND BEEN TOLD BY MR. GOLDEN AND MR. RUSAW,**
5 **(REPRESENTING FOLSOM RIDGE), AND MR. HILEY, MS. HOLSTEAD, MR.**
6 **BURFORD, AND MR. SNYNER, (REPRESENTING THE 393 NOT FOR PROFIT**
7 **COMPANIES), THAT IF THIS UTILITY IS REGULATED BY THE PSC, THAT THEIR**
8 **UTILTIY RATES WILL DOUBLE, TRIPLE, AND SKY ROCKET AS A RESULT OF THE**
9 **PSC REGULATION?**

10 A. Yes.

11 **Q. HOW DO YOU KNOW THIS?**

12 A. Residents who were told this, have come to the Complainants in this case for clarification.

13 **Q. WHAT WAS YOUR RESPONSE TO THESE INDIVIDUALS?**

14 A. I first asked if any of the individuals who were providing the information to residents regarding the
15 inflated utility rates as a result of PSC regulation, were also provided with a cost analysis to support
16 this statement? Residents responded with a "No." I then explained that because Folsom Ridge had
17 been subsidizing the operational costs of this utility, for nearly eight, (8), years, that the current rate
18 structure of the utility was artificially low; and that no matter who was responsible for operating and
19 managing the utility – utility rates must be increased. I indicated that the cost of PSC regulation, was

1 a general 2 percent increase for water and a general 7.5 percent increase for sewer, (as per Mr. Jim
2 Merceil – PSC staff), and that if Mr. Golden and Mr. Rusaw should become certificated as the utility
3 provider, as the owners of a private, for profit company, they were entitled to receive a profit, that
4 would be capped by the PSC as an amount proportionate to their investment in the utility.

5 **Q. WERE RESIDENTS PROVIDED A COST BASIS TO SUPPORT THIS INFORMATION**
6 **THEY WERE BEING PROVIDED BY MR. GOLDEN, MR. RUSAW, MR. HILEY, MR.**
7 **SNYDER, AND MS. HOLSTEAD, REGARDING THE INCREASED UTILITY COSTS**
8 **ASSOCIATED WITH PSC REGULATION?**

9 A. No – according to the residents who were making inquires to Complainants.

10 **Q. WAS THERE A LINE ITEM ASSOCIATED WITH THE REIMBURSEMENT OF THE**
11 **ASSOCIATION TO FOLSOM RIDGE FOR THE \$7,000.00 OWED TO FOLSOM BY THE**
12 **HOMEOWNERS' ASSOCIATION, IN THE PROFIT AND LOSS OF BUDGET VS.**
13 **ACTUAL PROVIDED TO HOMEOWNERS BY MR. GOLDEN AND MR. RUSAW?**

14 A. No.

15 **Q. DID MR. GOLDEN STATE AT THIS MEETING THAT THIS AMOUNT HAD BEEN PAID?**

16 A. Yes.

17 **Q. WHY IS THIS AMOUNT OWED TO FOLSOM RIDGE, NOT SHOWN AS A REOCCURING**
18 **AND ACCRUING LINE ITEM EXPENSE OWED, AND/OR PAID?**

*Provide
document*

1 **Q. HAVE RESIDENTS AND INTERVENORS, (BOTH PERSONALLY AND AS A PART OF**
2 **THE PROCEDURAL PROCESS BEFORE THE PSC), REQUESTED MEMBERSHIP**
3 **INFORMATION AND BILLING INFORMATION FROM MR. GOLDEN, MR. RUSAW,**
4 **FOLSOM RIDGE, BIWSA, (A.K.A – BIHOA), MR. MCELYEA, AND MR. COMLEY?**

5 **A. Yes.**

6 **Q. HAS THIS INFORMATION BEEN PROVIDED?**

7 **A. No.**

8 **Q. HAS THE COMMISSION ISSUED AN ORDER COMPELLING THIS INFORMATION**
9 **TO BE PROVIDED?**

10 **A. Yes – twice.**

11 **Q. HAS THIS INFORMATION BEEN PROVIDED AS A RESULT OF THE COMMISSION'S**
12 **2 ORDERS COMPELLING THE PRODUCTION OF THIS INFORMATION?**

13 **A. No.**

14 **Q. AT THE HOMEOWNERS' MEETING HELD IN MAY OF 2006, DID MR. GOLDEN**
15 **REDUCE THE WATER AND SEWER UTILITY RATES?**

16 **A. Yes.**

17 **Q. DID MR. GOLDEN PROVIDE A COST ANALYSIS TO SUPPORT HIS REDUCTION OF**
18 **THE UTILITY RATES?**

1 A. Ineffective and inefficient bookkeeping within the association by Mr. Golden and Mr. Rusaw.

2 **Q. AS PER THE "AGREEMENT FOR SALE AND TRANSFER OF WATER DISTRIBUTION**
3 **SYSTEM AND WASTEWATER SYSTEM," DID THE SELLER HAVE THE APPROVAL**
4 **OF THE REQUIRED MAJORITY OF THE MEMBERSHIP?**

5 A. Yes – by voting their approximate 250 lots, the developer, Folsom Ridge represented the majority of
6 the membership, as compared to the approximate 114 residential lot owners of Big Island.

7 **Q. WAS THIS A LEGITIMATE VOTE AS PER THE REQUIREMENTS OF THE AMENDED**
8 **AND RESTATED DECLARATION OF COVENANTS AND CONDITIONS THAT**
9 **GOVERN THE BIG ISLAND HOMEOWNERS WATER AND SEWER ASSOCIATION,**
10 **(F.K.A. – BIHOA)?**

11 A. No – this vote was in violation of the covenants and conditions, and therefore not legal.

12 **Q. PLEASE EXPLAIN?**

13 A. Article V – Association Membership and Voting Rights; Section 4. Board of Directors: The Board
14 of Directors shall consist of five directors who shall be members of the Association or an officer,
15 director, manager or partner of an Owner or its partner, or an employee, manager or designee of
16 Declarant. For a period ending September 1, 2006, Folsom Ridge, LLC., or its successors, shall be
17 entitled to appoint three, (3), Directors of the Board of Directors. A meeting was never called to
18 appoint new members to the board, to replace the Declarant, (Folsom Ridge), positions. Therefore,
19 the special meeting called and scheduled by Folsom Ridge, (Declarant), members on January 29,

2006, to vote the transfer of utility assets, was not legitimate or legal, and in violation of the covenants and conditions.

Q. WERE THERE OTHER VIOLATIONS OF THE COVENANTS AND CONDITIONS THAT GOVERN THE BIHOA, THAT MADE THE VOTE TO TRANSFER UTILITY ASSETS, NOT LEGITIMATE OR LEGAL?

A. Yes.

Q. PLEASE EXPLAIN?

A. Mr. Golden of Folsom Ridge, explained that individuals who were connected and receiving utility service, but who were not members of the HOA, could cast a vote. However, as per the Amended and Restated Declaration of Covenants and Conditions that govern the BIHOA, Article 1 – Definitions, Section 9: “Lot shall mean and refer to any plot of land ...or other real property which is added...to the terms of this Declaration by ratification...whereby such property is intended to be bound by the terms of this Declaration.” Since the voting of the association is by “lots” which are bound to the terms and conditions of the Declaration by their legal description through ratification; and since there are individuals who are not members of the association by ratification of the covenants and conditions that allow the voting of their lot(s); Mr. Golden allowing votes to be cast by nonmember lots, also makes the vote to transfer utility assets, not legitimate or legal, and in direct violation of the governing laws of the HOA.

Q. WERE E-MAILS EXCHANGED BETWEEN MPSC STAFF MEMBERS AND THE OFFICE OF PUBLIC COUNSEL AND COMPLAINANTS, CONCERNING AND QUESTIONING THE LEGITIMACY AND LEGALLITIES OF THE VOTE TO

1 **TRANSFER ASSETS AS WELL AS THE MAJORITY VOTE IN FAVOR OF THE 393 NOT**
2 **FOR PROFIT COMPANIES?**

3 A. Yes.

4 **Q. DOES ANY MEMBER OR NONMEMBER OF THE BIHOA HAVE ANY CONTROL OVER**
5 **THE TRANAFER OF THEIR UTILITY ASSETS?**

6 A. No – only the members of Folsom Ridge, LLC.

7 **Q. HAVE COMPLAINANTS IN THIS CASE, RAISED THIS ISSUE TO THE COMMISSION?**

8 A. Yes – this is one of the issues in the Formal Complaints filed with the PSC.

9 **Q. DID MS. HOLSTEAD, SELF APPOINTED PRESIDENT OF THE NOT FOR PROFIT 393**
10 **COMPANIES, ORGANIZE A PUBLIC MEETING FOR THE BIG ISLAND RESIDENTS**
11 **TO PRESENT HER PROPOSED SOLUTION OF A 393 TO THE UTILITY ISSUES?**

12 A. No. Mr. Bruce Kasten, a Big Island resident who is currently connected to the utility and receiving
13 service as a member of the BIHOA, and who is very concerned with the liabilities associated with
14 this utility being imposed upon him with membership in the 393 Companies, organized a meeting for
15 the benefit of all Big Island residents.

16 **Q. HOW DID MS. HOLSTEAD MAKE HER INFORMATION REGARDING THE 393 NOT**
17 **FOR PROFIT COMPANIES AVAILABLE TO RESIDENTS?**

18 A. Ms. Holstead's initial proposal was delivered to area residents by placing it in their mailboxes. Her
19 proposal was not delivered in a stamped/metered envelop, and Ms. Holstead is not a U.S. postal

1 carrier. Subsequent information distributed by Ms. Holstead regarding the 393 Companies, was
2 mailed and/or E-mailed to residents.

3 **Q. DID MS. HOLSTEAD CONTINUE HER PURSUIT OF THE 393 NOT FOR PROFIT**
4 **COMPANIES?**

5 **A.** Yes.

6 **Q. PLEASE EXPLAIN?**

7 **A.** On November 27, 2006, Ms. Holstead scheduled a meeting with the PSC staff, to include Mr. Rick
8 Rusaw, representing Folsom Ridge, LLC., Big Island Water and Sewer Association, (f.k.a. – Big
9 Island Homeowners' Association), and Applicant Big Island Water and Sewer Company, Inc., as
10 well as Mr. Mark Comley representing Mr. Rusaw as legal counsel on behalf of Folsom Ridge,
11 LLC., Big Island Water and Sewer Association, (f.k.a. – BIHOA), and applicant, Big Island Water
12 and Sewer Company, Inc. Interveners in that case were not notified of this meeting, and likewise
13 were not invited to attend. There was no memorandum sent to Interveners, either before or after the
14 meeting, outlining the content of the meeting discussions, and there were no remarks posted to EFIS
15 as public comments, regarding this meeting. Interveners learned of this meeting from other island
16 residents.

17 **Q. AS A RESULT OF THIS NON-PUBLIC MEETING, WHAT INITIATIVE AND ACTION**
18 **DID INTERVEENERS TAKE TO ENSURE THAT THE PUBLIC'S BEST INTERESTS**
19 **WERE BEING SERVED?**

1 A. Interveners scheduled a meeting with the PSC staff on December 13, 2006, to discuss the 393
2 proposal presented by Ms. Holstead. Interveners also invited additional members of the PSC staff, as
3 well as General Counsel and Public Counsel to attend.

4 **Q. WHAT SIGNIFICANT INFORMATION DID INTERVEENERS OBTAIN, AS A RESULT**
5 **OF THIS MEETING?**

6 A. Interveners learned that Ms. Holstead had presented her 393 proposal as having a majority support of
7 the island residents, although no public meeting had yet been organized. Additionally, Interveners
8 asked if Ms. Holstead had provided the staff, as confirmation of her majority support, a copy of the
9 document she had presented to these residents, to indicate exactly what these residents were in
10 agreement with and understanding of, in their support of the 393 Corporations to own and operate the
11 water and sewer utilities on Big Island. The staff said no.

12 **Q. SINCE MS. HOLSTEAD DID NOT PROVIDE THE STAFF WITH SUPPORT**
13 **DOCUMENTATION TO PROVE HER STATEMENT OF A "MJORITY SUPPORT," DID**
14 **INTERVEENERS SUPPLY DOCUMENTATION TO PROVE TO THE COMMISSION,**
15 **THAT MS. HOLSTEAD HAD OPPOSITION TO HER PROPOSAL?**

16 A. Yes – signed letters from residents.

17 **Q. WHAT OTHER SIGNIFICANT INFORMATION WAS DISCOVERED BY INTERVEENERS**
18 **AT THIS MEETING?**

19 A. Interveners learned that Ms. Holstead had submitted copies of the 393 Companies' by-laws to the
20 staff.

1 **Q. DID MS. HOLSTEAD PROVIDE COPIES OF THE 393 COMPANIES' BY-LAWS TO**
2 **INTERVEENERS OR OTHER RESIDENTS OF BIG ISLAND?**

3 A. No.

4 **Q. DID INTERVEENERS REQUEST COPIES OF THE BY-LAWS FROM MR. DALE**
5 **JOHANSEN, MANAGER OF THE WATER AND SEWER DEPARTMENT OF THE PSC?**

6 A. Yes.

7 **Q. DID MR. JOHANSEN PROVIDE COPIES OF THE 393 BY-LAWS TO THE**
8 **INTERVEENERS?**

9 A. No -- their requests were denied.

10 **Q. DURING THIS MEETING, DID INTERVEENERS MAKE IT VERY CLEAR TO THE PSC**
11 **STAFF INDIVIDUALS IN ATTENDANCE, THAT THE 393 COMPANIES DID NOT**
12 **ADDRESS, CORRECT, OR RESOLVE ANY OF THE UTILITY ISSUES ON BIG ISLAND?**

13 A. Yes.

14 **Q. WHAT WAS THE STAFF'S RESPONSE?**

15 A. Some staff members replied that they were aware that the 393 Companies did not resolve any of the
16 utility issues, but would allow the Commission to "wash their hands of this case."

17 **Q. IN THE DIRECT TESTIMONY OF MR. GAIL SNYDER, VICE PRESIDENT OF BOTH 393**
18 **COMPANIES, DOES MR. SNYDER STATE THAT "WE WOULD LIKE TO SEE THE**

1 ISSUES IN THOSE COMPLAINTS ADDRESSED AND SATISFACTORILY RESOLVED
2 BY THE PARTIES OR THE COMMISSION, PRIOR TO A TRANSFER OF ASSETS TO
3 THE 393 COMPANIES?"

4 A. Yes.

5 Q. DID INTERVEENERS MAKE THE SAME REQUEST FOR COPIES OF THE 393 BY-
6 LAWSTO MR. COMLEY IN A TELEPHONE CONFERENCE CALL ON DECEMBER 14,
7 2006?

8 A. Yes.

9 Q. DID MR. COMLEY PROVIDE COPIES OF THESE DOCUMENTS TO THE
10 INTERVEENERS?

11 A. No – their requests were denied.

12 Q. DURING THIS TELEPHONE CONFERENCE WITH MR. COMLEY, DID INTERVEENERS
13 ALSO INFORM HIM THAT THE NOT FOR PROFIT 393 COMPANIES DID NOT
14 ADDRESS AND/OR RESOLVE ANY OF THE UTILITY ISSUES IN THE FORMAL
15 COMPLAINTS?

16 A. Yes.

17 Q. DID INTERVEENERS ALSO MAKE VERY CLEAR TO MR. COMLEY, THAT IF THE
18 ASSETS OF THE WATER AND SEWER UTILITY ON BIG ISLAND WERE
19 TRANSFERRED TO THE 393 COMPANIES, AND IF AS A RESULT OF THIS

1 **TRANSFER OF ASSETS, MEMBERSHIP WAS NOW BEING IMPOSED ON**
2 **INDIVIDUALS AS A CONDITIONAL REQUIREMENT TO BE ABLE TO CONTINUE TO**
3 **RECEIVE THEIR UTILITY SERVICE, AND WITH THE LIABILITIES ASSOCIATED**
4 **WITH THIS UTILITY ALSO BEING IMPOSED AS A PART OF THAT MEMBERSHIP,**
5 **THAT LITIGATION WOULD IMMEDIATELY BE BROUGHT AGAINST THE 393**
6 **COMPANIES?**

7 A. Yes.

8 Q. **AGAIN, TO RECONFIRM, IN THE DIRECT TESTIMONY OF MR. GAIL SNYDER, VICE**
9 **PRESIDENT OF BOTH 393 COMPANIES, DOES MR. SNYDER STATE THAT “WE**
10 **WOULD LIKE TO SEE THE ISSUES IN THOSE COMPLAINTS ADDRESSED AND**
11 **SATISFACTORILY RESOLVED BY THE PARTIES OR THE COMMISSION, PRIOR TO**
12 **A TRANSFER OF ASSETS TO THE 393 COMPANIES?”**

13 A. Yes.

14 Q. **WAS MS. HOLSTEAD AND OTHER 393 BOARD MEMBERS MADE AWARE THAT**
15 **LITIGATION WOULD BE BROUGHT AGAINST THE 393 COMPANIES?**

16 A. Yes. Mr. Stan Temares notified Ms. Holstead and other 393 Board Members via telephone, as well
17 as notifying the Commission in a pleading filed with the MPSC as a public document.

18 Q. **WHAT OTHER INFORMATION REGARDING THE 393 COMPANIES, WAS FILED AS**
19 **PLEADINGS WITH THE COMMISSION?**

1 A. Ms. Orlor filed several pleadings with the Commission, stating that information regarding the 393
2 Companies, was not being made public.

3 **Q. WHAT WAS THE RESULT OF THE PLEADINGS FILED BY MS. ORLOR?**

4 A. Ms. Holstead began to provide information to residents regarding the 393 Companies in the format of
5 "Question and Answer."

6 **Q. WHEN MS. HOLSTEAD BEGAN TO MAKE 393 INFORMATION PUBLIC TO RESIDENTS,**
7 **DID SHE INCLUDE ANY SUPPORT DOCUMENTATION, SUCH AS BY-LAWS,**
8 **OPERATING AGREEMENTS, PROPERTY TITLES, COST ANALYSIS, STATE**
9 **STATUTES GOVERNING THE 393 COMPANIES, THE ASSET TRANSFER**
10 **AGREEMENT, ETC., TO SUPPORT HER PERSONAL AND/OR PROFESSIONAL**
11 **INTERPRETATIONS OF THE INFORMATION SHE WAS PROVIDING TO**
12 **RESIDENTS?**

13 A. No.

14 **Q. WERE REPEATED REQUESTS FOR THIS SUPPORT DOCUMENTATION MADE TO**
15 **MS. HOLSTEAD?**

16 A. Yes.

17 **Q. DID MS. HOLSTEAD HONOR THESE REQUESTS?**

18 A. No.

19 **Q. WHEN WAS THIS INFORMATION FINALLY MADE AVAILABLE?**

1 A. In a prehearing conference held on January 24, 2007, Ms. Orlor was insistent that these documents be
2 made available to the residents of Big Island to allow them to make an informed decision regarding
3 PSC regulation vs. 393 Non Profit Companies. PSC staff personnel agreed. Lewis Mills volunteered
4 the Office of Public Counsel's website as a means of posting the by-laws of the 393 Companies,
5 since Ms. Holstead did not want to incur the necessary costs associated with making copies of the
6 by-laws available to residents.

7 On Friday, January 26, 2007, the by-laws of the 393 Companies were finally made available to those
8 residents with internet access. This was only three, (3), days prior to the vote to transfer the utility
9 assets, and not all residents of Big Island have internet access.

10 **Q. DO YOU FEEL THAT RESIDENTS WERE ADEQUATELY INFORMED REGARDING**
11 **THE ISSUES OF THE 393 NOT FOR PROFIT COMPANIES?**

12 A. No, I do not. As indicated previously in my testimony, it was only after pleadings were filed with
13 the Commission requesting that the information regarding the 393 Companies be made public
14 information, that Ms. Holstead began to provide limited correspondences to residents regarding the
15 393 Not for Profit Companies, but did not provide support documentation to sustain her personal
16 and/or professional interpretations of the information she was providing to residents.

17 **Q. HAVE YOU READ THE BY-LAWS OF THE 393 NOT FOR PROFIT COMPANIES AND**
18 **THE ASSET TRANS FER AGREEMENT?**

1 A. Yes I have.

2 **Q. WHAT ARE YOUR OPINIONS?**

3 A. There is language in all of the documents that is unacceptable.

4 **Q. IS THIS JUST YOUR OPINION?**

5 A. No. This same opinion is shared by several residents, as well as that of an attorney who was
6 consulted to provide his legal opinion of the documents.

7 **Q. DID THE MPSC PROVIDE INFORMATION REGARDING REGULATION TO THE**
8 **RESIDENTS OF BIG ISLAND?**

9 A. Yes. A local public hearing was held in June of 2006 for this purpose, as well as allowing the
10 residents of Big Island to voice their opinions. In addition, the MPSC has a website available to all
11 those persons who are interested, and staff members have graciously made themselves available
12 speak with interested individuals both personally and by telephone.

13 **Q. MS. HOLSTEAD HAS APPOINTED HERSELF PRESIDENT OF THE 393 NOT FOR**
14 **PROFIT COMPANIES. DO YOU FEEL THAT SHE IS REPRESENTING THIS**
15 **POSITION TO, OF AND FOR THE RESIDENTS OF BIG ISLAND, IN A NEUTRAL**
16 **CAPACITY?**

17 A. No. Ms. Holstead in written submittals under signature to the Commission, and in numerous

1 E-mails sent to residents, can be quoted as making the following statements:

2 1. "I think PSC needs to amend their homeowner association guidelines. PSC homeowner

3 association guidelines currently require one vote per customer. I believe the PSC guidelines

4 should instead provide one vote per lot which would allow the developer to maintain control

5 over the utilities he installed and paid for ---until the project is substantially complete."

6 2. "There are those who believe Mr. Pugh will be satisfied by nothing less than a public hanging of

7 the developer. PSC has become the rope."

8 3. "Developers should not be required to adhere to the one vote per customer rule and should instead

9 be permitted to utilize the one vote per lot rule."

10 4. "Let it be known that I am opposed to PSC regulation of the Big Island water and sewer system. I

11 believe the PSC guidelines should be altered in new development situations to allow one vote

12 per lot instead of one vote per customer as I believe that is in the public's best interest and

13 especially the best interest of pre-existing homeowners."

14 **Q. HAS MS. HOLSTEAD PRESENTED UNBIASED INFORMATION TO THE RESIDENTS**
15 **OF BIG ISLAND REGARDING THE COST OF PSC REGULATION?**

1 A. No. In an E-mail dated 5/10/2006, sent to Big Island residents by Ms. Holstead, Ms. Holstead is
2 quoted as saying: "I am opposed to anything that will increase my utility costs and it is my
3 understanding if our utilities are PSC regulated, there will be a substantial increase in the fee
4 currently being charged for my water and sewer services." M., Holstead **DID NOT** provide
5 residents with the information sent to her on December 13, 2005, (five, months earlier), from Jim
6 Merciel at the MPSC, stating: "There seems to be a lot of talk regarding a regulated utility being
7 substantially more expensive than other types of utilities, however the only additional costs that
8 regulated utilities directly incur is an annual assessment, which is approximately 1.5 percent of
9 revenue for water utilities, and approximately 8 percent for sewer utilities and income tax which is
10 associated with return on equity investment. "...whatever rates you are paying today may or may
11 not reflect the true cost of service."

12 **Q. HAS MS. HOLSTEAD COMMUNICATED UNDER SIGNATURE TO RESIDENTS, THAT**
13 **THE WATER AND SEWER UTILITY ARE BEING ACQUIRED "AS IS," AND THAT**
14 **"THE 393 COMPANIES HAVE NO MONEY AT THIS TIME?"**

15 A. Yes.

16 **Q. IN HER SELF APPOINTED POSITION OF PRESIDENT OF THE 393 NOT FOR PROFIT**
17 **COMPANIES, DOES MS. HOLSTEAD HAVE A FINANCIAL RESPONSIBILITY ?**

18 A. Yes. IV – Financial Operations of the Company; 1. Financial Responsibility: It shall be the
19 responsibility of the Officers and the Board of Directors to establish rates and charges which shall, to

1 the extent reasonably foreseeable by the Board and Officers, produce revenues sufficient for the
2 sound financial operation of the Company, **including revenues sufficient to defray the expenses of**
3 **the Company for the operation maintenance of its facilities, the maintenance of a reasonable**
4 **sufficient reserve fund for unexpected contingencies,**
5 **an amount necessary for working capital, reserves for future capital expenditures, and**
6 communications to members.

7 **Q. IS THER A CAPITAL RESERVE BEING ACQUIRED BY THE 393 NOT FOR**
8 **PROFIT COMPANIES, AS A PART OF THE ASSETS BEING TRANSFERRED?**

9 A. No. Ms. Holstead confirms that, "The 393 Companies have no money at this time." Ms. Holstead
10 further explains, "...the company would borrow money for repairs and make loan payments out of
11 regular income."

12 **Q. DID MR. HILEY APPROACH COMPLAINANTS, AND ASK THAT THEY USE THEIR**
13 **COMPLAINTS WITH THE MPSC AS LEVERAGE AGAINST FOLSOM RIDGE, TO**
14 **REQUIRE FOLSOM RIDGE TO PROVIDE A CASH CAPITAL RESERVE ACCOUNT TO**
15 **THE 393 NOT FOR PROFIT COMPANIES, IF COMPLAINANTS WOULD DROP THEIR**
16 **COMPLAINTS?**

17 A. Yes.

1 Q. IN JUNE OF 2005, THE DEPARTMENT OF NATURAL RESOURCES MADE THE
2 RECOMMENDATION TO MR. REGGIE GOLDEN OF FOLSOM RIDGE, TO
3 INSTALL WATER METERS ON EACH SERVICE CONNECTION. SINCE THE
4 393 NOT FOR PROFIT COMPANIES WILL BE UNDER THE JURISDICTION
5 OF THE DNR, WHO WILL BE RESPONSIBLE FOR THE COST OF
6 INSTALLING THE WATER METERS?

7 A. Ms. Holstead has not provided this information.

8 Q. HAS MS. HOLSTEAD ADDRESSED THE REFUND IN CONTRIBUTIONS IN AID
9 OF CONSTRUCTION DUE INDIVIDUALS, AND HOW THIS PAYMENT WILL BE
10 MADE?

11 A. No.

12 Q. WHAT IS THE APPROXIMATE REFUND AMOUNT DUE?

13 A. \$294,135.00

14 Q. HOW WAS THIS AMOUNT CALCULATED?

15 A. Using the figures provided by Folsom Ridge to Mr. Krehbiel, and used in the feasibility study, as a
16 part of the Application case, the total cost of delivery system, sewer plant and water plant =
17 \$753,865.76. Tap purchases collected from existing residents by subscription, (\$2,000.00 per water
18 tap and \$4,800.00 per sewer tap), = \$306,800.00. Of a total number of existing lots on Big Island =
19 186; Folsom Ridge purchased 109 lots. At \$6,800.00, (\$2,000.00 per water tap and \$4,800.00 per
20 sewer tap), per each of the 109 lots Folsom Ridge purchased for development resale with water and
21 sewer connections = \$741,200.00.

Total cost of delivery system, sewer plant and water plant = \$753,865.76

Minus Folsom Ridge's proportionate share of 109 development resale lots minus \$741,200.00

Equals the correct proportionate amount that should have been collected = \$ 12,665.76

Actual amount collected for tap purchases from existing residents = \$306,800.00

Minus the correct proportionate amount that should have been collected

For tap purchases from existing residents minus \$ 12,665.76

Equals refund amount due = \$294,135.00

Q. IS THERE PROPERTY OF THE COMPLAINANTS AND INTERVEENERS INVOLVED IN THE POTENTIAL SALE/TRANSFER OF UTILITY ASSETS TO THE 393 COMPANIES?

A. Yes.

Q. PLEASE EXPLAIN?

A. Referenced as customer "refunds" and equipment by definition indicating customer owned, operated and maintained, vs. utility/company owned, operated and maintained, there is property of the Complainants and Interveners involved in the potential sale/transfer of utility assets to the 393 companies.

Q. ARE THE COMPLAINANTS AND INTERVEENERS OBJECTING TO THE TRANSFER OF THEIR UTILITY ASSETTS TO THE 393 COMPANIES?

1 A. Yes.

2 Q. HAVE THE COMPLAINANTS AND INTERVEENERS MADE THEIR OBJECTIONS
3 KNOWN TO MS. HOLSTEAD AND MR. COMLEY AND THE COMMISSION?

4 A. Yes – both verbally and in writing under signature.

5 Q. IS THE VALUE OF THE UTILITY ASSETS BEING TRANSFERRED,
6 DESIGNATED OR SPECIFIED BY A CORRESPONDING NUMBER OF FUTURE
7 TAP CONNECTIONS BEING PAID TO FOLSOM RIDGE, AND EQUAL TO THE
8 VALUE OF THE UTILITY ASSETS?

9 A. Ms. Holstead had not provided this information.

10 Q. IF THE OBLIGATION OF THE 393 COMPANIES TO FOLSOM RIDGE, FOR
11 THE VALUE OF THE UTILITY ASSET TRANSFER, IS MET BEFORE THE
12 TEN YEARS IS REALIZED, IS THIS OBLIGATION THEN CONSIDERED
13 FULFILLED, AND THE AMOUNT OF TAP FEES PAID TO FOLSOM RIDGE
14 CAPPED; OR ARE THE 393 COMPANIES OBLIGATED TO FULFULL THE TEN
15 YEAR TIME COMMITMENT TO FOLSOM RIDGE, BEYOND THE VALUE OF THE
16 UTILITY ASSET TRANSFER?

17 A. Ms. Holstead has not provided this information.

18 Q. IS THERE A 393 NOT FOR PROFIT COMPANY APPOINTED BOARD MEMBER
19 WHO KNOWINGLY AND WILLINGLY HAS HIS WATER AND SEWER SERVICE
20 LINES TOGETHER IN THE SAME TRENCH?

1 A. Yes.

2 Q. WHEN CONFRONTED ABOUT THIS ISSUE, AND THE POTENTIAL HEALTH
3 RISKS HE IS CREATING TO THE RESIDENTS OF BIG ISLAND, WHAT WAS HIS
4 RESPONSE?

5 A. "What business is it of yours," and "What difference does it make?"

6 Q. WAS THE VOTE FROM BIG ISLAND RESIDENTS FOR REGULATION OR THE 393
7 NOTFOR PROFIT COMPANIES, TIED TO THE PROXY BALLOTS FOR THE VOTE TO
8 TRANSFER THE UTILITY ASSETS?

9 A. Yes.

10 Q. AS PREVIOUSLY STATED IN YOUR TESTIMONY, WERE THESE VOTES LEGITIMATE,
11 LEGAL AND INFORMED?

12 A. No.

13 Q. CAN YOU PROVIDE SUPPORT DOCUMENTATION AND/OR WITNESS TESTIMONY
14 FOR THE STATEMENTS MADE IN YOUR DIRECT TESTIMONY?

15 A. Yes. This will be provided as evidence at the formal evidentiary trial.

16 Q. SUMMARY:

17 A. The complaints in this case, will NOT be rendered moot, until the request for relief has been satisfied
18 and: *"the water and sewer utility on Big Island is regulated; and operated and managed, and*

1 *administered by a certificated company and/or individual with no association and/or affiliation with*
2 *Folsom Ridge, LLC., or its representatives or associates.*” However, the Commission has not yet
3 provided jurisdictional clarification to this request. Therefore, the Complainants and Interveners
4 respectfully ask the Commission for clarification regarding their requests for the appointment of a
5 receiver, with respect to the Commission’s jurisdiction and powers.

6 Mr. Golden and Mr. Rusaw, representing Folsom Ridge, LLC., BIWS Association, (a.k.a. –
7 BIHOA), have a proven 8 year demonstrated and document history into the present, of their lack of
8 necessary capabilities in their resulting, unsuccessful attempt at constructing, and effectively and
9 efficiently owning, operating, managing and administrating a water and sewer utility. Not only do
10 Mr. Golden and Mr. Rusaw not possess the necessary abilities to provide merely safe and adequate
11 utility service, their 8 year performance has proven no desire to do so. Currently, during the 18
12 month period of the procedural proceedings of this case before the Commission, neither Mr. Golden
13 or Mr. Rusaw have demonstrated a desire or willingness to cooperate with either the Commission
14 and/or complainants and/or interveners by honoring the numerous requests for information,
15 obligating themselves to prior commitments made to residents, DNR, and the Commission under
16 signature, or refrain from providing false and conflicting information and documentation to the
17 Commission, DNR, and residents. For 8 years, Mr. Golden and Mr. Rusaw have proven their total
18 disregard for the governing jurisdiction of the DNR, in their numerous violations of noncompliance;
19 including the repeat violation, for the final, incorrect installation of the utility, after an initial
20 violation of notification had been issued. For 8 years, Mr. Golden and Mr. Rusaw, have ignored the
21 residents as well as the notice of legal counsel representing the residents, to become a licensed public
22 utility, and have continued billing and servicing on non-members in their operation of the utility. For
23 8 years Mr. Golden and Mr. Rusaw have made commitments under signature to the homeowners on

1 Big Island, and continue not to obligate themselves to those commitments. Mr. Golden and Mr.
2 Rusaw have escalated and intensified this arrogant behavior of 8 years, to interfere with, and halt
3 real estate transactions under the pretense of erroneous membership fees, and have refused to
4 correctly re-install the incorrectly installed water line as mandated by DNR, using the erroneous
5 membership fees as their excuse. Even under the present scrutiny of the Commission in the cases
6 before it, neither Mr. Golden or Mr. Rusaw have demonstrated a change in behavior. **PAST**
7 **BEHAVIOR, DICTATES FUTURE PERFORMANCE.** It is in the public's best interests to
8 ensure that the property owners on Big Island have the right to the appreciation of their property
9 values, relative to the market trends within the economy, and not adversely affected and/or dictated
10 by the water and sewer utility's incorrect installation and/or misoperation, mismanagement and
11 misadministration. The requested relief from complainants and interveners in these cases remains
12 the same: "A regulated public water and sewer utility, by a certificated entity with no association
13 and/or affiliation with Folsom Ridge, LLC., (Mr. Golden and/or Mr. Rusaw), or its agents or
14 representatives. In addition, the transfer of utility assets to the 393 Not for Profit Companies as a
15 solution to the utility issues on Big Island, is rejected and opposed by complainants and as not being
16 in the public's best interests, since this is not a regulated entity.

17 It is in the public's best interests to ensure that the property owners on Big Island have the right to
18 the appreciation of their property values, relative to the real estate market trends within the economy,
19 and not adversely affected and/or dictated by the water and sewer utility's incorrect installation and
20 improper operation, management, and administration. Therefore, to ensure that safe and adequate
21 water and sewer utility service will be provided in the future, effectively and efficiently, this utility
22 must be regulated. Other civil issues involving this utility, and Mr. Golden and Mr. Rusaw, of
23 Folsom Ridge, LLC., BIWSA, (f.k.a. - BIHOA), and the Not for Profit 393 Companies that are not

1 within the jurisdiction of the Missouri Public Commission, will still need to be addressed in civil
2 court. Complainants and interveners welcome the opportunity to present and prove their cases before
3 the Commission at the Formal Evidentiary Hearing in these proceedings.

4 **Q. ARE YOU AWARE OF AND AGREE WITH THE DIRECT TESTIMONY OF**
5 **BENJAMIN D. PUGH?**

6 A. Yes.

7 **Q. ARE YOU AWARE OF AND AGREE WITH THE DIRECT TESTIMONY OF CINDY**
8 **FORTNEY?**

9 A. Yes.

10 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

11 A. Yes.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Folsom Ridge, LLC Owning and)
Controlling the Big Island Homeowner Association.)
and the Application of Folsom Ridge and Big)
Island Homeowners Water and Sewer Association)
Inc. for an Order Authorizing the Transfer and)
Assignment of Certain Water and Sewer Assets to)
Big Island Water Company and Big Island Sewer)
Company, and in Connection Therewith Certain)
Other Related Transactions in an Unincorporated)
Area of Camden County, Missouri)

Case Nos. WC-2006-0082
& WO-2007-0277

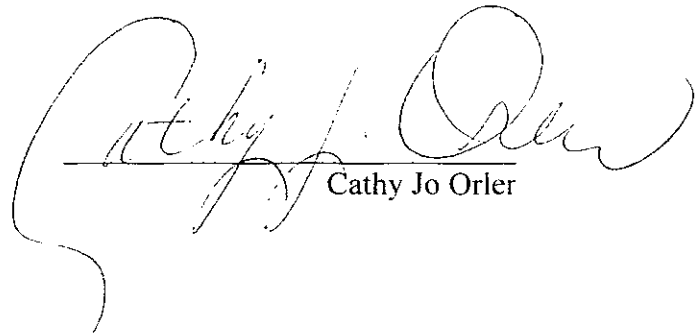
AFFIDAVIT OF [CATHY JO ORLER]

STATE OF MISSOURI)
) 497-58-4300ss.
COUNTY OF CAMDEN)

Cathy Jo Orler, of lawful age, on her oath states: that she has participated in the preparation of the foregoing Direct Testimony in question and answer form, consisting of 58 pages to be presented in the above cases; that the answers in the foregoing Testimony were given by her; that she has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of her knowledge and belief.



DEBORAH K. STOLLER
My Commission Expires
September 12, 2008
Camden County
Commission #04499950


Cathy Jo Orler

Notary 2-13-07
Deborah K. Stoller
State of Missouri
County of Camden

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

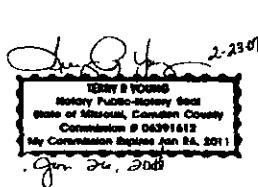
In the Matter of Folsom Ridge, LLC Owning and)
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and the Application of Folsom Ridge and Big)
Island Homeowners Water and Sewer Association)
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Assignment of Certain Water and Sewer Assets to)
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Company, and in Connection Therewith Certain)
Other Related Transactions in an Unincorporated)
Area of Camden County, Missouri

Case Nos. WC-2006-0082
& WO-2007-0277

AFFIDAVIT OF [CATHY J. ORLER]

STATE OF MISSOURI)
COUNTY OF CAMDEN) ss. 497-58-4300

Cathy J. Orler, of lawful age, on her oath states: that she has participated in the preparation of the foregoing Testimony in question and answer form, consisting of 37 pages to be presented in the above cases; that the answers in the foregoing Testimony were given by her; that she has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of her knowledge and belief.



Cathy J. Orler
Cathy J. Orler

Reason for error
E. 1) Hang up or line fail
E. 2) No answer
E. 3) Exceeded max. E-mail size
E. 4) Busy
E. 5) No facsimile connection

File No. Mode Destination Pg(s) Result Page Not Sent
0644 Memory TX 3467613 P. 1 OK

Date/Time: Feb. 24, 2007 2:22AM

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* * * Communication Result Report (Feb. 24, 2007 2:22AM) * * *

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

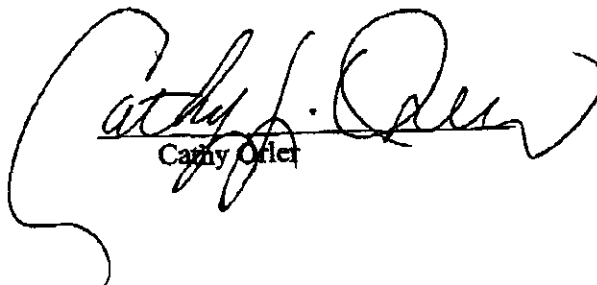
In the Matter of Folsom Ridge, LLC Owning and)
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 Assignment of Certain Water and Sewer Assets to)
 Big Island Water Company and Big Island Sewer)
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 Other Related Transactions in an Unincorporated)
 Area of Camden County, Missouri

Case Nos. WC-2006-0082
 & WO-2007-0277

AFFIDAVIT OF [CATHY ORLER]

STATE OF MISSOURI)
)
 COUNTY OF CAMDEN) ss. 497-58-4300

Cathy Orler, of lawful age, on her oath states: that she has participated in the preparation of the foregoing Testimony in question and answer form, consisting of 31 pages to be presented in the above cases; that the answers in the foregoing 1 Testimony were given by her; that she has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of her knowledge and belief.


 Cathy Orler

State of Missouri

County of Camden

On this date 2-16-2007 Cathy Orler personally appeared before me
Kris Christensen a notary public for the above state and county.



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