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REBUTTAL TESTIMONY

OF

Missouri Public
Service Commission

Cathy Orler

CASE NOS. 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. WHAT IS YOUR EMPLOYMENT EXPERIENCE?

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

8 Q. WHY ARE YOU PROVIDING TESTIMONY?

9 A. My testimony is being provided in response to the direct testimonies of Gail Snyder, Rick Rusaw,
10 and Barbara Brunk.

11 Q. REFERENCING THE "INITIAL QUESTIONNAIRE," OF MR. SNYDER'S DIRECT
12 TESTIMONY, (PAGE 1 - LINES 13 THROUGH 16), DID THIS QUESTIONNAIRE
13 CONTAIN INFORMATION EXPLAINING REGULATION OF THE UTILITY BY THE
14 MISSOURI PUBLIC SERVICE COMMISSION, FOR INFORMATIONAL COMPARISON
15 TO THE RESIDENTS?

16 A. No.

17 Q. IN HIS DIRECT TESTIMONY, MR. SNYDER STATES THAT THE BYLAWS OF THE 393
18 COMPANIES HAVE BEEN ADOPTED ON A PROVISIONAL BASIS SUBJECT TO
19 REVISIONS AND SUGGESTIONS OF THE PSC STAFF. DID THE PSC STAFF MAKE

Order Exhibit No. 2
Case No(s) WC-2006-0082, et al.
WO-2007-0277
Date 2-28-07 Rptr *K

1 **SUGGESTIONS OR RECOMMENDATIONS TO ADDRESS THE ISSUES OF IMPOSED**
2 **MEMBERSHIP IN THE 393 COMPANIES AS A CONDITIONAL AND ADDITIONAL**
3 **REQUIREMENT TO RECEIVE, OR CONTINUE RECEIVING UTILITY SERVICE AND**
4 **THE LIABILITIES ASSOCIATED WITH THIS UTILITY BEING IMPOSED AS A PART**
5 **OF THIS MEMBERSHIP?**

6 A. Mr. Snyder did not provide this information.

7 **Q. MR SNYDER STATES THAT THE BYLAWS OF THE 393 COMPANIES WILL BE**
8 **AVAILABLE FOR DISTRIBUTION FOLLOWING THE TRANSFER. (PAGE 2 – LINE**
9 **16). HE ALSO STATES THAT THESE DOCUMENTS ARE CURRENTLY AVAILABLE**
10 **ELECTRONICALLY. WHEN WERE THESE DOCUMENTS MADE AVAILABLE**
11 **ELECTRONICALLY?**

12 A. It was only three, (3), days prior to the vote for the 393 Companies.

13 **Q. WHAT MEANS HAS BEEN MADE AVAILABLE TO INDIVIDUALS WHO DO NOT HAVE**
14 **INTERNET ACCESS, TO REVIEW COPIES OF THESE DOCUMENTS?**

15 A. Mr. Snyder does not say.

16 **Q. FOR INDIVIDUALS WHO WOULD LIKE TO INFORM THEMSELVES REGARDING**
17 **THE 393 COMPANIES, AND WITH SPECIFIC RESPECT TO THE GOVERNING**
18 **BYLAWS OF THE 393 COMPANIES AND THE ASSET TRANSFER AGREEMENT,**

**PRIOR TO THE TRANSFER, WHAT MEANS HAVE BEEN MADE AVAILABLE FOR
THOSE INDIVIDUALS TO RECEIVE HARD COPIES OF THE DOCUMENTS?**

A. Mr. Snyder did not provide this information.

**Q. MR. SNYDER STATES ON PAGE 2 – LINE 18, THAT THE TRANSFER AGREEMENT IS
SATISFACTORY TO ALL PARTIES – WHO ARE THE PARTIES?**

A. Mr. Snyder does not say.

Q. IS THE TRANSFER AGREEMENT, SATISFACTORY TO YOU?

A. No – it is not.

**Q. MR. SNYDER STATES ON PAGE 2 – LINES 22 AND 23, AND PAGE 3 – LINES 1 AND 2,
THAT THE BOARD OF DIRECTORS, AN ENGINEER, CONSTRUCTION
CONTRACTOR, AND TWO REPRESENTATIVES OF THE CURRENT MANAGEMENT
COMPANY DID A WALK THROUGH INSPECTION OF THE FACILITIES. WERE
THESE INDIVIDUALS SPECIFICALLY NAMED AND REFERENCED BY
QUALIFICATIONS AND/OR CREDENTIALS?**

A. No.

**Q. WERE ANY OF THESE INDIVIDUALS EMPLOYED BY FOLSOM RIDGE, LLC., AND/OR
THE BIG ISLAND HOMEOWNERS' WATER AND SEWER ASSOCIATION?**

1 A. Mr. Snyder did not provide this information.

2 Q. WERE ANY OF THESE INDIVIDUALS INDEPENDENT TO THE CURRENT OWNERS
3 AND OPERATORS AND FUTURE OWNERS AND OPERATORS OF THE UTILITY
4 SYSTEM?

5 A. Mr. Snyder did not provide this information.

6 Q. WAS THERE A REPRESENTATIVE FROM THE PSC INVOLVED IN THIS WALK
7 THROUGH?

8 A. Mr. Snyder did not indicate that there was..

9 Q. ON PAGES 3 AND 4 OF MR. SNYDER'S TESTIMONY, HE PRESENTS PROJECTED
10 UTILITY RATES FOR THE SYSTEM AND ITS UTILITY CUSTOMERS. WHAT
11 MONTHLY AMOUNT IS BEING DEFERRED TOWARDS A CAPITAL RESERVE
12 ACCOUNT AND REGULAR AND SCHEDULED MAINTENCE?

13 A. Mr. Snyder did not present this information as a monthly amount, but represents the annual reserve
14 amount to be \$2,456.00; and the monthly maintenance amount to be \$100.00, equating to \$1,200.00
15 annually.

16 Q. BEING A HOMEOWNER, AND REALIZING THE COSTS ASSOCIATED WITH
17 EMERGENCY REPAIRS AND REGULAR AND SCHEDULED MAINTENCE, THESE
18 FIGURES DO NOT SEEM ADEQUATE TO ME. DID MR. SNYDER SUPPLY A

1 MAINTENCE SCHEDULE WITH ASSOCIATED COSTS AND A CORRESPONDING
2 LISTING OF POSSIBLE EMERGENCY OR UNEXPECTED REPAIRS WITH
3 PROJECTED COSTS ASSOCIATED?

4 A. No, he did not.

5 Q. DID HE ADDRESS THE ISSUE OF SPECIAL ASSESSMENTS, IF A SITUATION WERE
6 TO ARISE, THAT REQUIRED MORE CASH RESERVES THAT WHAT WERE
7 AVAILABLE TO COVER SUCH EXPENSES?

8 A. No, he did not.

9 Q. WHAT AMOUNT IS BEING DEFERRED FOR INSURANCE?

10 A. \$150.00 per month; \$1,800.00 annually.

11 Q. DOES THIS AMOUNT INCLUDE LIABILITY INSURANCE ASSOCIATED WITH
12 LITIGATION AGAINST THE 393 COMPANIES?

13 A. Mr. Snyder did not provide this information.

14 Q. ARE THE 393 COMPANIES EVEN ELIGIBLE FOR LIABILITY INSURANCE AGAINST
15 LITIGATION, NOW THAT A PETITION AGAINST THE UTILITY ASSETS, HAS BEEN
16 FILED IN THE CIRCUIT COURTS NAMING THE 393 COMPANIES AS DEFENDANTS?

17 A. Mr. Snyder did not provide this information.

1 **Q. REFERENCING THE DIRECT TESTIMONY OF MR. RICK RUSAW, IS THE BUSINESS**
2 **ADDRESS OF LIFEBRIDGE CHRISTIAN CHURCH AT 13045 UTE HIGHWAY,**
3 **LONGMONT, COLORADO 80504, ALSO THE BUSINESS ADDRESS OF FOLSOM**
4 **RIDGE, LLC.?**

5 **A. Mr. Rusaw did not make this clear.**

6 **Q. OTHER THAN MR. SNYDER PROVIDING PREVIOUS UTILITY EXPERIENCE, WHAT**
7 **UTILITY EXPERIENCE DO THE OTHER MEMBERS OF THE 393 BOARD OF**
8 **DIRECTORS POSESS?**

9 **A. This information has not been provided.**

10 **Q. ON PAGE 3 - LINES 1 THROUGH 6, MR. RUSAW STATES THAT FOLSOM RIDGE**
11 **WOULD HAVE A VOTE FOR EACH RESIDENCE IT OWNED ON SEPARATE LOTS**
12 **THAT WAS CONNECTED TO AND TAKING SERVICE FROM THE SYSTEM. FOR**
13 **THOSE RESIDENCES THAT ARE OWNED BY FOLSOM RIDGE, AND ARE**
14 **CONNECTED AND TAKING SERVICE, BUT HAVE MULTIPLE AND INDIVIDUAL**
15 **CONNECTIONS, AND ARE ON A SINGLE LOT, (SUCH AS A DUPLEX, TRIPLEX,**
16 **QUADPLEX, OR CONDEMENIUM STRUCTURE), HOW MANY VOTES WOULD**
17 **FOLSOM RIDGE BE VOTING?**

18 **A. Mr. Rusaw did not provide this information.**

1 **Q. DOES MR. RUSAW ADDRESS THE VOTING BY MEMBERSHIP THROUGH A**
2 **SUBSCRIPTION AGREEMENT, OF A LOT, AS AN UNPLATTED TRACT OF LAND**
3 **WITH MORE THAN ONE RESIDENCE?**

4 **A.** No, he does not.

5 **Q. ON PAGE 3 – LINES 8 THROUGH 14, MR. RUSAW STATES THAT THE ASSOCIATION**
6 **HAS BEEN OPERATING THE WATER AND SEWER SYSTEMS AND MAINTAINS THE**
7 **SYSTEM ACCOUNTS. MR. RUSAW ALSO STATES THAT TITLE TO THE**
8 **COMPONENTS OF THE SYSTEM AND EASEMENTS HAS REMAINED IN THE NAME**
9 **OF FOLSOM RIDGE. HOW THEN, DOES MR. RUSAW EXPLAIN FOLSOM RIDGE**
10 **UNDER SIGNATURE OF REGGIE GOLDEN, IN A LETTER TO CHRISTINE RICKETTS**
11 **OF DNR, DATED NOVEMBER 29, 2001, STATING THAT THE “SYSTEM AND THE**
12 **GROUND HAVE BEEN TURNED OVER TO THE BIG ISLAND HOMEOWNERS**
13 **ASSOCIATION?”**

14 **A.** In my opinion, it seems that a discrepancy exists. It would appear that Mr. Rusaw is providing
15 conflicting information as a part of his direct testimony, or to the Department of Natural Resources.

16 **Q. ON PAGE 4 – LINES 1 THROUGH 8, MR. RUSAW STATES THAT THE ASSETS OF THE**
17 **WASTEWATER AND WATER, WILL BE TRANSFERRED TO THE BIG ISLAND**
18 **SEWER COMPANY AND THE BIG ISLAND WATER COMPANY, RESPECTIVELY.**

1 **WHO THEN WILL BE RESPONSIBLE FOR THE LIABILITIES OF THE CLAIMS FILED**
2 **AGAINST THESE ASSETS IN THE CIRCUIT COURT?**

3 A. Mr. Rusaw does not make reference to this.

4 **Q. WHAT IS THE IS THE DOLLAR AMOUNT OF TAP FEES BEING PAID BY THE 393**
5 **COMPANIES TO FOLSOM RIDGE OVER THE NEXT 10 YEARS?**

6 A. Mr. Rusaw did not provide this amount.

7 **Q. IF THE TAP FEE DOLLAR AMOUNT BEING PAID TO FOLSOM RIDGE BY THE 393**
8 **COMPANIES, IS REACHED BEFORE THE END OF THE 10 YEAR PERIOD, IS THE**
9 **AMOUNT PAID, CONSIDERED PAID IN FULL; OR MUST THE 10 YEAR**
10 **OBLIGATION ALSO BE FULFILLED?**

11 A. Mr. Rusaw did not address this.

12 **Q. WHO IS THE ENGINEER, CONTRACTOR AND AGENT FOR THE 393 COMPANIES?**

13 A. Mr. Rusaw did not provide this information.

14 **Q. MR. RUSAW STATES THAT THE 393 COMPANIES "HAVE STARTED THE PROCESS**
15 **TO ACQUIRE THE NECESSARY PERMITS FROM DNR." DO THE 393 COMPANIES**
16 **MEET THE FINANCIAL REQUIREMENTS OF DNR, FOR THE NECESSARY**
17 **PERMITS?**

1 A. Mr. Rusaw does not address this.

2 **Q. MR. RUSAW STATES THAT THE VOTE FOR THE TRANSFER OF ASSETS CAN BE**
3 **BROKEN DOWN IN SEVERAL WAYS; DO THE VARIOUS TABULATIONS FOR THE**
4 **VOTES HAVE SIGNIFICANCE AS PER THE BYLAWS GOVERNING THE VOTE OF**
5 **THE ASSOCIATION?**

6 A. No. The Amended and Restated Covenants and Conditions that govern the voting of the association,
7 require a voting of lots. Folsom Ridge voted approximate 250 lots and controlled the vote.

8 **Q. IS IT LAWFUL FOR THE PRESENT HOA, TO BILL AND SERVICE INDIVIDUALS WHO**
9 **ARE NOT MEMBERS?**

10 A. No.

11 **Q. IF THIS IS NOT LAWFUL, WHY HAS THIS VIOLATION OF THE LAW, BECOME A**
12 **VOTING OF "POPULARITY" EITHER "FOR," OR "AGAINST," REGULATION BY**
13 **THE PSC VS. 393 COMPANIES?**

14 A. I do not know.

15 **Q. WHY IS A VOTE TO DETERMINE "POPULARITY" OF A MAJORITY, FOR THE 393**
16 **COMPANIES, BEING USED AS THE ALTERNATIVE TO LAWFUL REGULATION TO**
17 **ENFORCE COMPLIANCE, WHEN THE "POPULARITY BY MAJORITY" DOES NOT**
18 **CORRECT THE UNLAWFULNESS?**

1 A. I am unable to answer this question.

2
3 **Q. WERE THERE OTHER REASONS WHY THIS VOTE TO TRANSFER ASSETS MAY NOT**
4 **HAVE BEEN A LEGITIMATE AND LEGAL VOTE AS PER THE AMENDED AND**
5 **RESTATED COVENANTS AND CONDITIONS THAT GOVERN THE ASSOCIATION?**

6 A. Yes. As per the bylaws governing the association, control of the board and the association by Folsom
7 Ridge, was to have ended on September 01, 2006. There was no such meeting called for the
8 purpose of re-electing a new board. Therefore, the calling of the special meeting by members of
9 Folsom Ridge, to vote the transfer of assets, was not in compliance with the requirements of the
10 association's bylaws, nor was the resulting vote that occurred, within this meeting.

11 **Q. BY DEFINATION, WHAT WAS THE \$7,000.00 OWED FOLSOM RIDGE IN 2004 AND**
12 **2005, FOR INSTALLATION OF THE INTITAL SYSTEM, AND HOW WAS IT**
13 **ACCOUNTED FOR AS BEING OWED AND AS BEING PAID?**

14 A. Mr. Rusaw did not make reference to this.

15 **Q. MR. RUSAW STATES THAT "ANY EXCESS REVENUE RECEIVED ABOVE THOSE**
16 **COSTS IS RETAINED FOR FUTURE LIQUIDITY AND WORKING CAPITAL. NONE IS**
17 **REBATED TO FOLSOM RIDGE OR TO THE MEMBERS." HOWEVER, IN THE**
18 **ASSOCIATION MEETING HELD IN 2006, MR. REGGIE GOLDEN STATED THAT THE**

1 **\$7,000.00 AMOUNT OWED TO FOLSOM RIDGE HAD BEEN PAID. HOW WAS THIS**
2 **AMOUNT PAID TO FOLSOM RIDGE?**

3 **A.** Mr. Rusaw did not indicate this.

4 **Q.** **MR. RUSAW ADMITS THAT WATER AND SEWER UTILITY SERVICE IS BEING**
5 **PROVIDED OUTSIDE THE SERVICE AREA OF THE ORIGINAL SYSTEM AS**
6 **DESCRIBED IN THE AMENDED AND RESTATED DECLARATION OF COVENANTS**
7 **AND CONDITIONS. WHY WAS THIS VIOLATION COMMITTED?**

8 **A.** Mr. Rusaw did not state the reason.

9 **Q.** **MR. RUSAW STATES THAT THE OFFER OF WATER AND SEWER SERVICE IS**
10 **LIMITED TO THE FACILITIES INSTALLED. HOWEVER, THE FACILITES**
11 **INSTALLED ARE LIMITED TO THE AREA WITHIN THE REAL PROPERTY AS**
12 **DESCRIBED IN THE AMENDED AND RESTATED COVENANTS AND CONDITIONS.**
13 **THEREFORE, WHY WAS THIS VIOLATION COMMITTED?**

14 **A.** Again, Mr. Rusaw did not state the reason.

15 **Q.** **MR. RUSAW STATES THAT WATER AND SEWER SERVICE IS BEING OFFERED TO**
16 **ONLY "...THOSE PERSONS WHOSE PROPERTY IS PROXIMATE TO WATER MAINS**
17 **AND WASTEWATER COLLECTION LINES INSTALLED FOR THE SYSTEMS AND**
18 **WHO HAVE AGREED TO PAY THE REQUIRED TAP ON FEES." SINCE ALL**
19 **PROPERTY IS PROXIMATE TO WATER MAINS AND WASTEWATER COLLECTION**

1 **LINES, WHAT IS TO PREVENT CONTINUED AND FURTHER VIOLATIONS OF THE**
2 **SAME?**

3 A. Nothing.

4 **Q. AS PER SCHEDULE 1 OF MR. RUSAW' TESTIMONY, IN THE YEAR 2001 THERE WERE**
5 **25 SEWER CONNECTIONS. HOWEVER, IN A LETTER FROM REGGIE GOLDEN OF**
6 **FOLSOM RIDGE, TO CHRISTINE RICKETTS OF DNR, DATED DECEMBER 19, 2001,**
7 **MR. GOLDEN REPORTS: "I RECENTLY HAD MIKE MCDUFFEY INSPECT ALL**
8 **CONNECTIONS TO THE SEWER SYSTEM. HE REPORTS THAT THERE ARE**
9 **CURRENTLY 33 ACTIVE HOOK UPS TO THE SYSTEM." HOW DOES MR. RUSAW**
10 **ACCOUNT FOR THIS DESCREPENCY?**

11 A. The discrepancy was not noted.

12 **Q. WHY DOES JIM JACKSON OF PROFESSIONAL ENGINEERING SERVICES IN A**
13 **LETTER TO CHRISTINE RICKETTS OF DNR, DATED DECEMBER 18, 2001, REPORT**
14 **THE TOTAL NUMBER OF HOUSES HOOKED UP TO THE TREATMENT SYSTEM IS**
15 **34 WHEN MR. RUSAW'S SCHEDULE IS PRESENTING 25?**

16 A. Again, this discrepancy is not noted.

17 **Q. WHY DOES MR. RUSAW'S SCHEDULE REFLECT 34 SEWER CONNECTIONS IN THE**
18 **YEAR 2002, WHEN IN THE MINUTES OF THE ANNUAL HOA MEETING DATED JULY**

1 **08, 2002, CLEARLY INDICATE THAT 32 SEWER CONNECTIONS WERE CONNECTED**
2 **SINCE MARCH OF 2002?**

3 A. The math does not add up. Mr. Rusaw's schedule in the year 2001 indicates 25 sewer connections. If
4 32 sewer connections were "connected since March of 2002," with respect to the date of this report
5 of July 08, 2002, then the total sewer connections for this reporting period, should be 57. (25 sewer
6 connections for the year 2001 plus 32 sewer connections for the reporting period of the year 2002 =
7 57 total sewer connections).

8 **Q. DO ANY OF THESE SEWER CONNECTION FIGURES INCLUDE RESERVED SEWER**
9 **CONNECTIONS FOR THOSE INDIVIDUALS WHO PAID FOR A SEWER TAP WITH**
10 **THE RESERVED RIGHT TO CONNECT?**

11 A. No, they do not. All of these figures refer to active connections.

12 **Q. WHY ARE YOU MAKING REFERENCE TO THE RESERVED SEWER CONNECTIONS?**

13 A. In the Big Island West construction permit dated June 23, 2000, issued by DNR to the Big Island
14 Homeowners Association, the Permit Conditions state: the treatment plant expansion shall be
15 complete and operational prior to the construction of the eighty-first house within the Big Island
16 Development. The eighty houses within the Big Island Development will be considered to be the
17 original existing thirty-six houses along with the construction of forty-four new houses or
18 connections.

1 Q. ACCORDING TO THE CONSTRUCTION PERMIT AND ITS CONDITIONS AS ISSUED
2 TO FOLSOM BY DNR, AND USING FOLSOM RIDGE'S FIGURES AS SUPPLIED TO
3 THE DNR BY FOLSOM RIDGE AND MR. RUSAW IN HIS TESTIMONY, WHEN
4 SHOULD THE TREATMENT PLANT EXPANSION BEEN COMPLETE AND
5 OPERATIONAL?

6 A. In the year 2002. Using the figures presented previously in my testimony, of 57 active sewer
7 connections in the year 2002, plus the 38 number of reserved sewer connections, (to comply with the
8 DNR Permit Conditions), as listed on Exhibit B of the bylaws of the 393 Big Island Sewer Company,
9 totals = 95 sewer connections in the year 2002.

10 Q. WAS THIS OVERSUBSCRIPTION BROUGHT TO THE ATTENTION OF FOLSOM RIDGE
11 BY BIG ISLAND RESIDENTS?

12 A. Yes.

13 Q. DID FOLSOM RIDGE ADDRESS OR RESOLVE THE SITUATION?

14 A. No.

15 Q. DID BIG ISLAND RESIDENTS THEN MAKE DNR AWARE OF THIS ISSUE?

16 A. Yes.

17 Q. DID DNR ADDRESS OR RESOLVE THIS ISSUE?

1 A. No.

2 **Q. WHEN WAS THE FILTER BED EXPANSION TO THE TREATMENT PLANT FINALLY**
3 **CONSTRUCTED?**

4 A. Only after Formal Complaints were filed with the Missouri Public Service Commission, in the year
5 2006.

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

8 A. No, it was done to protect their property rights as a result of the planning and zoning meeting where
9 Big Island residents opposed the proposed rezoning of Big Island from single family to multi family
10 by Mr. Golden and Mr. Rusaw, as per an E-mail sent to Mr. Phil Hiley from Reggie Golden.

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

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

15 **Q. IS PHASE 1, OF FOLSOM RIDGE'S DEVELOPMENT ON BIG ISLAND BY MR. GOLDEN**
16 **AND MR. RUSAW, AND AS REPRESENTED BY MR. GOLDEN AND MR. RUSAW TO**
17 **RESIDENTS, DNR, AND THE MISSOURI PUBLIC SERVICE COMMISSION, THE SAME**
18 **AS THE PHASE 1 OF THE PUD? ("BIG ISLAND PLANNED UNIT DEVELOPMENT").**

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

5 **Q. WAS THE ORIGINAL PHASE 1 WATER AND SEWER UTILITY DESIGNED TO**
6 **SERVICE THIS NEWLY FORMED PUD AND/OR THE ISLAND VIEW ESTATES**

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

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

14 A. No. It was nearly two later that the first board of directors was elected.

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

18 A. This date was approximately 2 years later.

1 Q. HOW DID FOLSOM RIDGE IMPOSE THE COVENANTS AND RESTRICTIONS OF
2 THE BIG ISLAND HOA AT THE TIME OF SALE, IF PROPERTIES WERE
3 PURCHASED PRIOR TO THE RECORDING OF THE RESTRICTIVE COVENANTS
4 FOR THE BIG ISLAND HOA, IN DECEMBER 2000?

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

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

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

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

17 A. This information was not provided, however, I think the percentage is relatively small.

1 **Q. WHAT WAS THE OBJECTIVE OF MR. GOLDEN AND MR. RUSAW, (FOLSOM RIDGE),**
2 **IN "PLATTING" AND "REPLATTING" PORTIONS OF THE LAND REFERRED TO ON**
3 **PAGE 5 – LINES 7 THROUGH 21 OF MS. BRINK'S DIRECT TESTIMONY?**

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

8 **Q. MS. BRUNK STATES IN HER TESTIMONY, THAT "THE VISION FOR BIG ISLAND**
9 **DEVELOPMENT HAS CHANGED OVER TIME." WAS THIS CHANGE IN VISION, A**
10 **RESULT OF MR. GOLDEN AND MR. RUSAW PROTECTING THEIR PROPERTY**
11 **RIGHTS BY PLATTING AND REPLATTING?**

12 A. According to the E-mail sent by Mr. Golden – yes.

13 **Q. AS A PART OF THE CHANGING VISION FOR BIG ISLAND BY MR. GOLDEN AND MR.**
14 **RUSAW, DID MR. GOLDEN AND MR. RUSAW REPRESENT TO POTENTIAL BIG**
15 **ISLAND PROPERTY BUYERS AS STATED IN THE AMENDENAND RESTATED**
16 **COVENANTS AND RESTRICTIONS, THAT THE DEVELOPMENT WAS A PLANNED**
17 **SINGLE FAMILY COMMUNITY DEVELOPMENT?**

18 A. Yes.

1 **Q. DID MR. GOLDEN AND RUSAW THEN CHANGE THE LANGUAGE OF THE AMENDED**
2 **AND RESTATED COVENANTS AND CONDITIONS, AS WELL AS THE PRIOR**
3 **REPRESENTATION MADE TO NOW EXISTING RESIDENTS THAT WERE**
4 **PROSPECTIVE BUYERS, THAT THE SINGLE FAMILY DEVELOPMENT IN WHICH**
5 **THEY PURCHASED PROPERTY WOULD NOW CONTAIN DUPLEXES, TRIPLEXES**
6 **AND QUADPLEXES, AND THESE MULTI FAMILY STRUCTURES WOULD NOW**
7 **SHARE THE PROPERTY LINE BOUNDARIES OF THE SINGLE FAMILY**
8 **RESIDENCES?**

9 **A. Yes.**

10 **Q. IS THE WATER AND SEWER UTILITY, CONSTRUCTED BY MR. GOLDEN AND**
11 **MR. RUSAW, (FOLSOM RIDGE), A PART OF THE NECESSARY**
12 **INFRASTRUCTURE THAT WAS INSTALLED TO DEVELOP THEIR LAND, AS**
13 **INDICATED IN MS. BRUNK'S TESTIMONY?**

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

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

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

4 A. Yes.

5 **Q. ARE BIG ISLAND CENTRAL, BIG ISLAND WEST, AND ISLAND VIEW ESTATES,**
6 **LOCATED IN THE PHASE 1 OF THE DEVELOPMENT OF BIG ISLAND?**

7 A. No.

8
9 **Q. HOW DO MS. BRUNK, AS PER HER DIRECT TESTIMONY, AND MR. GOLDEN, AND**
10 **MR. RUSAW EXPLAIN THE VIOLATIONS OF THE PHASE 1 BOUNDARY?**

11 A. Mr. Rusaw states in his direct testimony, that persons whose property is proximate to water mains
12 and wastewater collection lines and who have agreed to pay tap fees, are provided with service.

13 **Q. IS THIS PERMITTED BY THE AMENDED AND RESTATED COVENANTS AND**
14 **CONDITIONS AND AS PER THE ESCROW AGREEMENT?**

15 A. No.

16 **Q. OF WHAT SIGNIFICANCE, ARE THE BOUNDARIES OF THE WATER AND**
17 **SEWER UTILITY SYSTEM OF THE PHASE 1 DEVELOPMENT?**

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

8 Q. IF FOLSOM RIDGE HAS CONCENTRATED ENTIRELY ON ITS DEVELOPMENT OF
9 BIG ISLAND AND THE ADJACENT 190 ACRES, ACCORDING TO MS. BRUNK'S
10 BRUNK'S TESTIMONY, HOW DOES FOLSOM RIDGE EXPLAIN AN 8 YEAR
11 DOCUMENTED HISTORY TO PRESENT, OF IMPROPERLY CONSTRUCTING THE
12 WATER AND SEWER UTILITY SYSTEM, COMBINED WITH ITS MISMANAGEMENT
13 AND MISOPERATION IN ITS MISADMINISTRATION, AND COMMITTING
14 NUMEROUS AND REPEAT DNR VIOLATIONS?

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

18 Q. IF THIS IS NOT THE FIRST, NOR THE ONLY REAL ESTATE DEVELOPMENT
19 MEMBERS OF THE COMPANY HAVE BEEN INVOLVED IN, ACCORDING TO MS.
20 BRUNK'S TESTIMONY, WHAT ARE THE OTHER REALESTATE DEVELOPMENTS,

1 AND HAVE THERE BEEN ANY ISSUES RAISED BY RESIDENTS CONCERNING
2 THESE DEVELOPMENTS?

3 A. Yes – Lifebridge. Lifebridge development in Colorado, is a project involving Mr. Golden and Mr.
4 Rusaw, and the Lifebridge church where Mr. Golden is a member and Mr. Rusaw is senior minister.
5 There have been some similar concerns raised by residents there, regarding that project.

6 Q. MS. BRUNK HAS DEVOTED A GREAT DEAL OF HER TESTIMONY TO THE FUTURE
7 DEVELOPMENT OF BIG ISLAND BY MR. GOLDEN, MR. RUSAW, AND HERSELF.
8 HOWEVER, WHAT RELEVANCY DOES THIS FUTURE DEVELOPMENT HAVE WITH
9 RESPECT TO THE ISSUES IN THE CASES BEFOR THE COMMISSION?

10 A. None. Past behavior dictates future performance. The issues in the cases before the Commission are
11 a direct result of the present and past performance of Mr. Golden and Mr. Rusaw, and their lack of
12 capabilities in an unsuccessful attempt to construct, and effectively and efficiently operate, own,
13 manage and administer a water and sewer utility.

14 Q. IF MR. GOLDEN AND MR. RUSAW EXERCISED PRUDENT PLANNING, ACCORDING
15 TO MS. BRUNK'S TESTIMONY, TO INCLUDE PROVISIONS FOR EXISTING HOMES
16 TO HOOK UP TO THE UTILITY SYSTEM, HOW DO THEY EXPLAIN NOT HAVING
17 AN ESTABLISHED HOA IN PLACE TO OWN, OPERATE, MAINTAIN AND
18 ADMINISTER THE UTILITY AND ITS SERVICES AT THE TIME OF THE
19 SOLICITATION, SALES, AND PURCHASES OF THE WATER AND SEWER UTILITY

1 **TAPS TO EXISTING RESIDENTS, OR AT THE TIME OF CONNECTING RESIDENTS**
2 **TO THE UTILITY TO RECEIVE SERVICE?**

3 A. It would appear that Mr. Golden and Mr. Rusaw did not know what they were doing, and that no
4 planning was done.

5 Q. **MS. BRUNK STATES IN HER TESTIMONY THAT "...UPON NOTICE OF VIOLATION**
6 **FOLSOM FOLLOWED UP TO INVESTIGATE THE PROBLEM, HIRED THE**
7 **APPROPRIATE LOCAL ENGINEER OR CONTRACTOR TO ASSIST WITH**
8 **DETERMINING THE APPROPRIATE SOLUTION AND IMPLEMENTED A PLAN TO**
9 **RESOLVE THE ISSUE." WHY THEN, IS LITIGATION PENDING AGAINST MR. LEES**
10 **SEEKING INDEMNIFICATION FROM HIM FOR THE COSTS OF CORRECTING THE**
11 **IMPROPERLY INSTALLED UTILTIY LINES, INSTEAD OF THE ENGINEER OR**
12 **CONTRACTOR?**

13 A. It appears that Mr. Golden and Mr. Rusaw say one thing and do another.

14 Q. **MS. BRUNK STATES IN HER TESTIMONY THAT MR. GOLDEN AND MR. RUSAW DID**
15 **NOT HAVE DIRECT INVOLVEMENT IN THE INITIAL CONSTRUCTION OF THE**
16 **FACILITIES. THEY WERE INTENDED TO BE INVESTMENT PARTNERS ONLY. DID**
17 **MS. BRUNK SUPPLY A COPY OF THE PARTNERSHIP AGREEMENT INDICATING**
18 **THAT MR. GOLDEN AND MR. RUSAW WERE INVESTMENT PARTNERS ONLY, TO**
19 **SUPPORT HER STATEMENT.**

1 A. No.

2 Q. CAN RESIDENTS OF BIG ISLAND, AND COMPLAINANTS, PROVIDE TESTIMONY
3 AND SUPPORT DOCUMENTATION TO PROVE THAT MR. GOLDEN AND MR.
4 RUSAW WERE DIRECTLY INVOLVED WITH THE INITIAL CONSTRUCTION OF
5 THE FACILITIES?

6 A. Yes

7 Q. CAN COMPLAINANTS PROVIDE TESTIMONY AND SUPPORT DOCUMENTATION TO
8 INDICATE THAT MR. LEES, MR. GOLDEN, AND MR. RUSAW WERE ACTING AS
9 THREE EQUAL MANAGING PARTNERS IN THE BIG ISLAND DEVELOPMENT
10 PROJECT?

11 A. Yes

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

15 A. Yes.

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

1 A. Yes.

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

4 A. Yes.

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

7 A. Because the association did not exist.

8 Q. WHO IS THE OWNER OF THE WATER AND SEWER UTILITY ON BIG ISLAND?

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

12 Q. DOES THIS MEAN THAT MR. GOLDEN AND/OR MR. RUSAW HAVE PROVIDED
13 FALSE INFORMATION REGARDING THE OWNERSHIP OF THIS UTILITY?

14 A. Yes.

15 Q. IN NUMEROUS DOCUMENTS FILED WITH THE PSC IN THE COMPLAINT CASE,
16 HAVE COMPLAINANTS RAISED THE QUESTION OF OWNERSHIP TO THE PSC?

17 A. Yes.

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

3 A. Yes.

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

5 A. No.

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

10 A. They were not.

11 **Q. WERE THERE SOME BIG ISLAND RESIDENTS WHO DID NOT VOLUNTARILY**
12 **AGREE TO THE TERMS AND CONDITIONS OF THOSE COVENANTS?**

13 A. Yes.

14 **Q. WERE THERE SOME RESIDENTS WHO WERE THREATENED, INTIMIDATED, AND**
15 **COERSED INTO SIGNING THESE COVENANTS?**

16 A. Yes.

1 **Q. FOR THOSE RESIDENTS WHO REFUSED TO SIGN THESE COVENANTS, DID MR.**
2 **MCELYEA STATE TO MR. GOLDEN IN A LETTER THAT THESE INDIVIDUALS**
3 **SHOULD BE "CONSIDERED MEMBERS?"**

4 **A. Yes.**

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

8 **A. Yes.**

9 **Q. DID MS. BRUNK PROVIDE EITHER MEMBERSHIP AND/OR BILLING INFORMATION**
10 **TO PROVE HER TESTIMONY THAT THE UTILITY HAS 61 SEWERCUSTOMERS**
11 **AND 48 WATER CUSTOMERS?**

12 **A. No.**

13 **Q. HAVE RESIDENTS, AND COMPLAINANTS, (BOTH PERSONALLY AND AS A PART OF**
14 **THE PROCEDURAL PROCESS BEFORE THE PSC), REQUESTED MEMBERSHIP**
15 **INFORMATION AND BILLING INFORMATION FROM MR. GOLDEN, MR. RUSAW,**
16 **FOLSOM RIDGE, BIWSA, (A.K.A - BIHOA), MR. MCELYEA, AND MR. COMLEY?**

17 **A. Yes.**

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

1 A. No.

2 Q. HAS THE COMMISSION ISSUED AN ORDER COMPELLING THIS INFORMATION
3 TO BE PROVIDED?

4 A. Yes – twice.

5 Q. HAS THIS INFORMATION BEEN PROVIDED AS A RESULT OF THE COMMISSION'S
6 2 ORDERS COMPELLING THE PRODUCTION OF THIS INFORMATION?

7 A. No.

8 Q. MS. BRUNK STATES THAT THERE ARE RESIDENTS ON BIG ISLAND WHO PAID A
9 CONNECTION OR TAP ON FEE, IS THIS CORRECT?

10 A. No – residents purchased a water and/or sewer tap. This is a tangible item located on their private
11 property, and is a personal property asset they own.

12 Q. IN MS. BRUNK'S TESTMONY, SHE STATED THAT THERE 33 HOUSEHOLDS WHO
13 HAVE PAID A CONNECTION OR TAP FEE BUT WHO HAVE NOT CONNECTED.
14 SCHEDULE B OF THE 393 SEWER COMPANY LISTS 41 LOTS THAT HAVE PAID A
15 TAP FEE BUT HAVE NOT CONNECTED. IS THIS A DESCERPANCY?

16 A. Yes.

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

3 **A. Yes.**

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

6 **A. No.**

7 **Q. HAVE RESIDENTS OF BIG ISLAND BEEN TOLD BY MR. GOLDEN AND MR. RUSAW,**
8 **THAT IF THIS UTILITY IS REGULATED BY THE PSC, THAT THEIR UTILITY RATES**
9 **WILL DOUBLE, TRIPLE, AND SKY ROCKET AS A RESULT OF THE PSC**
10 **REGULATION?**

11 **A. Yes.**

12 **Q. WERE RESIDENTS PROVIDED A COST BASIS TO SUPPORT THIS INFORMATION**
13 **THEY WERE BEING GIVEN REGARDING THE INCREASED UTILITY COSTS**
14 **ASSOCIATED WITH PSC REGULATION?**

15 **A. No.**

16 **Q. HAVE ANY OF THE DIRECT TESTIMONIES, OTHER THAN THOSE OF THE**
17 **COMPLAINANTS, STATED THAT THE BIG ISLAND HOMEOWNERS WATER AND**
18 **SEWER ASSOCIATION IS BILLING AND SERVICING NONMEMBERS, AND**

1 **THEREFORE SHOULD BE SUBJECT TO REGULATION BY THE JURISDICTION OF**
2 **THE PSC?**

3 A. No.

4 **Q. ISN'T THIS A FUNDAMENTAL FACT IN AND OF ITSELF THAT PROVES THAT THIS**
5 **UTILITY SHOULD BE SUBJECT TO REGULATION BY THE PSC?**

6 A. I think so.

7 **Q. IS THE FACT THAT THE UTILITY IS BILLING AND SERVICING INDIVIDUALS WHO**
8 **ARE NOT MEMBERS OF THE ASSOCIATION, AND THE FACT THAT THE**
9 **ASSOCIATION IS BEING CONTROLLED BY THE DEVELOPER, FOLSOM RIDGE, BY**
10 **THE VOTING OF LOTS, NOT PROOF THAT THIS UTILITY SHPULD BE SUBJECT TO**
11 **THE JURISDICTION OF THE PSC BY REGULATION?**

12 A. I think so.

13 **Q. CAN YOU PROVIDE SUPPORT DOCUMENTATION TO SUPPORT THE STATEMENT**
14 **IN YOUR REBUTTAL TESTIMONY?**

15 A. Yes – this documentation will be provided as evidence at the formal evidentiary hearing.

16 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

17 A. Yes.