

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of Big Island Water)
& Sewer Company, Inc. for a Certificate of)
Convenience and Necessity Authorizing It to)
Construct, Install, Own, Operate, Control, Manage)
and Maintain a Water and Sewer System for the)
Public Located in an Unincorporated Area of)
Camden County, Missouri)

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

AFFIDAVIT OF [CINDY FORTNEY]

STATE OF MISSOURI)
COUNTY OF (Camden)) 514-78-3415.

Cindy Fortney, of lawful age, on her oath states: that she has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 16 pages to be presented in the above case; that the answers in the foregoing Rebuttal 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.

Cindy Fortney
[Cindy Fortney]

Subscribed and sworn to before me this 12 day of February, 2007.

[Signature]
Notary Public

USA WILL COX
My Commission Expires
August 6, 2010
Camden County
Commission #02816081



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Missouri Public
Service Commission

Fortney Exhibit No. 7
Case No(s) WC-2006-0082, et al
WO-2007-0277
Date 2-28-07 Rptr rs

TESTIMONY

OF

Cindy Fortney

CASE NOS. WC 2006 0082 & WO 2007 0277

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

2 A. Cindy Fortney. I reside at 3298 Big Island Dr., Roach, Missouri 65787.

3 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

4 A. I am self-employed. I am an independent information security consultant. I am a Certified
5 Information Systems Security Professional (CISSP) and a Certified Information Security Manager
6 (CISM). I have been in the Information Security business for 21yrs including 15yrs with EDS and
7 Perot Systems in Dallas, TX.

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

9 A. My father and I are both home and landowners on Big Island. I am also the beneficiary to my
10 father's properties and assets. I've been involved first hand with the issues of all the properties in
11 my testimony. We have had multiple issues with Folsom Ridge LLC and filed formal complaints
12 (WC-2006-0138 and WC-2006-0139) in September of 2005.

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

14 A. I moved to 1554 Big Island Drive, (Big Island), Roach, MO as a permanent resident in June of
15 2004. I was a temporary resident for 5 years previous to June 2004 to 1554 Big Island Drive, my
16 father's house. Since I have moved here, I have been involved with issues going on, on Big Island
17 and also keep my father abreast as he resides mostly in Paola, KS. In June of 2005, my father sold
18 his house at 1554 Big Island Drive. We together and equally bought the residence I now reside,
19 3298 Big Island Drive in July of 2005. I helped find the real estate agent to sell my father's house
20 and was involved from beginning to end of the transaction. I was also the key person in purchasing

1 the 3298 Big Island Drive, as this is my primary residence. My Dad's primary residence is in Paola,
2 KS.

3 Q. WAS YOUR FATHER A MEMBER OF THE BIHOA AT 1554 BIG ISLAND
4 DRIVE?

5 A. No, at the time he bought the house (1998) there was no active HOA to join.

6 Q. ARE YOU A MEMBER OF THE BIHOA AT 3298 BIG ISLAND DRIVE?

7 A. No, I have never received any paperwork regarding the BIHOA nor have I ever signed anything
8 with regard to BIHOA.

9 Q. DOES YOUR FATHER OWN ANY OTHER PROPERTY ON BIG ISLAND THAT
10 YOU ARE BENEFICIARY TO; THEREFORE YOU HAVE CONCERN OR INTEREST?

11 A. Yes, lot 8 of Portage Park, Unit 3.

12 Q. IS YOUR FATHER A MEMBER OF THE BIHOA AT PORTAGE PARK, UNIT 3?

13 A. No, at the time he bought the lot (1999) there was no active HOA to join.

14 Q. DID YOUR FATHER PURCHASE WATER AND/OR SEWER TAPS AT THE TIME
15 THEY WERE SOLICITED?

16 A. Yes. He bought a sewer tap for \$4800 for the 1554 Big Island Drive property in 1998. Lot 8 of
17 Portage Park, Unit 3 included water and sewer taps.

18 Q. DID YOUR FATHER EVER RECEIVE A LETTER FROM MR. LEES THAT
19 STATED '...THEY WILL NOT BE CHARGED A MONTHLY FEE UNTIL THEY
20 HOOK UP?'

1 A. Yes.

2 Q. WHEN WERE THE RESTRICTIVE COVENANTS OF THE BIG ISLAND HOA
3 RECORDED AND IMPLEMENTED?

4 A. December 29, 2000.

5 Q. WERE THERE INTERFERENCES WITH THE SELLING OF 1554 BIG ISLAND
6 DRIVE?

7 A. Yes, Folsom Ridge and the BIHOA tried to stop the \$221k real estate closing for 1554 Big Island
8 Drive in June 2005. At closing, we were blind sided by a letter that had just been faxed that day to
9 Westside Escrow, Inc., from Charles McElyea representing the BIHOA. We were told we could
10 not continue the closing process until the issue was resolved which took an extra 2hours or more
11 and frustration on our part, our realtor's part and on the buyer's part. Our real estate agent, Helen
12 Riggins was also blind sided and asked for Mr. Charles McElyea to teleconference into the closing.
13 He reiterated the purpose of the letter that was faxed. The buyers were to join and start paying a
14 fee to the BIHOA or they would not be able to ever hook up to the system. If the new buyers did
15 not sign the letter, Mr. Fortney would be sued for back fees of \$990. Just a couple of months before
16 the closing I was told the back fees were around \$500 in a meeting with Folsom Ridge and BIHOA
17 at the Central Bank of Lake of the Ozarks. How could they almost double in a couple of months?

18 With regard to the faxed letter to Westside Escrow, this document states that if the purchasers
19 choose not to sign the ratification of membership in the Big Island Homeowners Association
20 document, then the current sewer and water taps will be cancelled and they will have no further
21 rights to tap into the sewer or water system in the future. I checked with Elena Seon at the DNR the

1 next day and she said this is absolutely not true. In the letter, they also requested a \$21 fee per
2 month from the new owners. The house that was bought only had one sewer tap. Well, due to the
3 incorrect installation, there is a water tap, too, but this was at the fault of Folsom Ridge at the time
4 of the installation by putting both water and sewer pipes into the same trench. The new owners
5 elected to NOT participate in the BIHOA and were NOT connected or receiving service. In
6 addition to the document that was faxed, there was another document titled 'Homes Association
7 Certification'. The information herein is confusing, at best, because there has never been any
8 mention of 'well fees,' and my father's signature appearing as trustee, indicating his election to not
9 pay any fees, seems to be contradicted by the statement appearing prior to his signature, stating:
10 "We herby certify that all assessments, if any, are paid to this date, with none being past due." It
11 also states that fees should be paid to 'Folsom Ridge, LLC'. In fact, there is no mention of Big
12 Island Home Owners Association or BIHOA on this 'Homes Association Certification' document.
13 The only entity mentioned is Folsom Ridge, LLC. So, it appears that Folsom Ridge is owns and
14 controls the homeowners association.

15 Since that time, the new homeowners have hooked up to water and sewer, receiving service and are
16 members of the BIHOA. They did not pay back fees, my father has not been sued and the new
17 owners did purchase a water tap for \$3000.00.

18 **Q. WERE YOU EVER COERCED OR INTIMIDATED BY FOLSOM RIDDGE, LLC**
19 **AND/OR BIHOA?**

20 **A.** Yes. I was intimidated by Folsom Ridge and BIHOA members in a meeting at the Central Bank of
21 Lake of the Ozarks that I attended in May of 2005. They tried to coerce me into paying or having

1 my Dad pay back fees for taps at that time and Mr. Stan Zeldon who was a BIHOA Board Member
2 said he would talk to them (Folsom Ridge/BIHOA) into waiving the back fees if I became a
3 member and started paying fees at that time. They singled Cathy Orlor and I out of the group and
4 told us that we were the only one's not paying. I refused to do anything. I did not believe in the
5 pressure I was being dealt nor did I believe in the BIHOA due to previous meetings I attended. By
6 this I mean, the voting process did not seem to be legal as they allowed non-members to vote (this
7 can be verified in the testimony that Phil Hiley gave at the public hearing at the fire station in May
8 2006. He stated he was not a member, but was allowed to vote), voting was by property owner per
9 lot and Folsom Ridge owned most of the lots, so their vote would always win, they expressed the
10 reason for forming an HOA vs. another type of entity was that with an HOA they would not have to
11 be regulated and they would not have to go through 'red tape', etc. when implementing the system
12 and maintaining it. I didn't agree with this philosophy as I have always felt there should be some
13 regulation by a 3rd party. I believe in audits and periodic checks for compliance in any business.
14 Plus, there had already been violations with the system.

15 **Q. WERE THERE INTERFERENCES WITH THE PURCHASING OF 3298 BIG**
16 **ISLAND DRIVE?**

17 **A.** Yes, Folsom Ridge and the BIHOA had a line item on the closing for \$14 in 'Association Dues' to
18 Big Island HOA. I was not shown nor given any paperwork about this HOA. I was told that if I
19 didn't pay the \$14, the closing of this \$300k house would be stopped until it was resolved. Since I
20 found it ridiculous to stop a \$300k closing, I said I would pay the fees and take action later. There
21 was no paperwork shown to me nor given to me about the HOA, but they got their \$14. I don't

1 even know how the Title Company, Chalfant and Thompkins, could allow this. Again, this closing
2 was postponed a good hour or more and they threatened to stop the closing. To this date I have not
3 received any paperwork from BIHOA, however, my father does receive a combined bill for his lot
4 in Portage Park Unit 3 and this house for dues. Neither one of us has signed any letter of ratification
5 nor membership forms to be a member, yet my father is billed usually quarterly. How can he be
6 billed if we are not members and not receiving service? How can they interfere with real estate
7 transactions?

8 **Q. WERE YOU EVER TOLD THAT THE PIPES IN THE SAME TRENCH ON YOUR**
9 **LOT WOULD NOT BE FIXED UNLESS BACK FEES WERE PAID ON LOT 8 OF**
10 **PORTAGE PARK UNIT 3?**

11 **A.** Yes, in the meeting in May of 2005 where I was intimidated, I was also told that Folsom Ridge,
12 LLC would not fix the water/sewer taps on the lot itself unless my Dad or I paid the back fees. We
13 thought 'The Settlement' mandated this fix. I don't know for sure because no one wants to take
14 responsibility for something that was installed on someone's property improperly because it is out
15 of the jurisdiction of DNR and will be out of jurisdiction of the PSC. It is the responsibility of the
16 property owner.

17 FR did implement a fix. However, instead of installing a new 1" water line to the lot, they did a
18 "Y" off of the neighbor's water line. In essence, the two property owners that paid for a dedicated
19 1" water line are now sharing one 1" water line. This was not the expected fix or what they paid
20 for. We hired them to install the taps with integrity and safety in mind. Manholes are labeled

1 'Water' or 'Sewer' but if you take the lid off, there are 2 pipes, water and sewer inside, which is the
2 one that should be used? Or the lid says 'Water' and the pipe inside is a sewer pipe.

3 I'll state an update about labeling later in my testimony.

4 **Q. WHEN DID YOU FIRST HEAR ABOUT THE 393 CORPORATIONS?**

5 A. I received a letter in my mailbox last September I think it was. It was informal and not a lot of
6 details.

7 **Q. WHEN DID YOUR FATHER FIRST HEAR ABOUT THE 393 CORPORATIONS?**

8 A. He also received information in the mail via the US Post Office. He did not know who Pam
9 Holstead was and although he is a complainant he has asked me to speak on his behalf with regard
10 to his complaint and the PSC (Judge Woodruff knows the situation).

11 **Q. WHEN DID YOU HEAR THAT THE 393 CORPORATIONS WERE BEING**
12 **FORMED?**

13 A. I was in a meeting with the PSC staff in December 2006 and they had bilaws on the table. They
14 would not let me have a copy to review. Kofi Botang asked me if I had not seen them before and I
15 said 'no' and I can't have a copy. He did not understand that either. He said, 'but your names are
16 all in there....'. I just shrugged my shoulders and said this is the first I've heard of them and Dale
17 Johansen just said he could not give us a copy. See Cathy Orlor's Testimony with regard to more
18 about this specific meeting.

19 **Q. WHEN DID YOU HEAR ABOUT THE VOTE FOR TRANSFER OF ASSETS?**

1 A. I heard about the vote a few days before the Weds Jan. 24th 2007 meeting at the PSC. This was the
2 Weds before the vote. There was also a meeting scheduled for that Saturday before the vote for all
3 homeowners to ask questions. Bruce Kasten, a concerned homeowner who is for regulation,
4 connected to the system, but not a member of the HOA, requested this meeting as there had not
5 been a public meeting only an abundance of information flowing through email within the few
6 weeks prior and that was confusing. This was the only public meeting held about the 393 corps and
7 was held the Sat. before the Monday vote. The Friday before the vote we received an email and a
8 link to the bylaws from Lewis Mills, but did not have time to read them before these meetings.

9 Q. DID YOU OR YOUR FATHER RECEIVE INFORMATION TO HELP YOU VOTE
10 PRIOR TO THE VOTE FOR THE TRANSFER OF ASSETS TO THE 393
11 CORPORATOINS?

12 A. We received multiple Q&A's in email and by US Post. We never received any bylaws, asset
13 transfer agreement, operating agreements or qualifications of the board of directors that would help
14 us in our vote.

15 Q. WHEN DID YOU RECEIVE INFORMATION ABOUT VOTING PROXY IF YOU
16 COULD NOT ATTEND THE MEETINGS TO VOTE?

17 A. This information went out via email Weds after the PSC meeting. Just 3 days before the Sat.
18 meeting and 5 days before the Monday meeting to vote. My Dad may have received something
19 Friday or Saturday (day of the meeting) via US Post. I had to respond to the email to get a proxy for
20 my father to fill out and fax back to me ASAP. The ballot I received was a regular ballot and it

1 didn't say anything about proxy, but I was allowed to turn it in with my vote at the Monday
2 meeting. It was nice they took it into consideration, but is that a legal way to run a voting process?

3 **Q. DID YOU ATTEND THE SATURDAY MEETING FOR HOMEOWNERS ABOUT THE**
4 **393 CORPORATIONS?**

5 A. Yes. It was a good meeting. We asked if the vote Monday could be postponed until we read the by
6 laws, asset transfer agreement and since the PSC was going to have their media officer tell the
7 county of the situation, we felt there should be more time for people to get accurate and all
8 information before making their vote. We also felt that AsBuilt drawings should be provided and
9 reviewed by an objective 3rd party for confirmation of the integrity of the system and that the
10 concerns and issues highlighted by the PSC be addressed. We wanted the vote to be delayed until
11 after the evidentiary hearing at the end of February. The answer was that they could not wait.

12 **Q. DID YOU ATTEND THE MONDAY HOA MEETING WHERE THE VOTES TOOK**
13 **PLACE?**

14 A. Yes. The question was asked as to whose vote would count for the transfer of assets and
15 terminating or modifying the HOA. Reggie Golden said that anyone who was connected and
16 receiving service, anyone that had signed the letter of ratification and anyone who was not a
17 member and/or not receiving service, but paying on a regular basis. These votes would count for
18 being a member and would count for the transfer of assets and terminating or modifying the HOA.
19 However, this is a by lot vote and FR had the majority. So the vote was needless. Again, this way
20 of voting does not match the covenants (allowing non-members to vote), it's a violation of the

1 covenants. The meeting only lasted 15mins or so and I turned in my vote and my Dad's vote for
2 non-members.

3 **Q. WAS THERE AN ADDITIONAL VOTE BY ALL HOMEOWNERS FOR THE PSC?**

4 A. Yes. This vote was per home/landowner, but included # of lots owned on the ballot? This was on
5 the ballot. "How many lots do you own?" So, I believe the intention was still by home/land owner
6 (by person), but I do not know what or how they included/excluded the # of lots. I believe I still got
7 my (1) vote for my house and my Dad got his (1) vote for his lot, but I was not privy to the detailed
8 results. They could've included us as '1' vote or '3'? NOT My (and my Dad's) house is on 2 lots
9 and my Dad's lot on the other end of the island is 1 lot.

10 **Q. DID YOU HAVE CONCERNS ABOUT THE VOTING PROCESS THAT INCLUDED**
11 **MEMBERS VS. NON MEMBERS?**

12 A. Yes and I sent the following to Dale Johansen: "I think I might have figured out what Reggie was
13 saying about the votes/responses from the 105 out of 110 homeowners in the meeting Monday. I
14 believe he said he received responses from 105 and 80 voted of which 60 were 'yes' (remember at
15 least 10 are FR employees or FR owned properties that they are renting, etc. and this was one vote
16 per islander property owner, not by lot), 15 were 'no' and 5 'abstained'. If this is the case....it is even
17 MORE paramount that all the responses are looked at to see what the comments were from the 25
18 that responded but did not vote? I'm very surprised that, that many people got the information and
19 the proxies in the timeframe of their 2-3 day turnaround. Information went out about proxies and
20 ballots after the Weds meeting at the PSC yet the meetings to vote were Sat. and Monday. This
21 vote of all islanders for the PSC could actually turn out to be almost 50/50 or 60/40, but not 75/20 like
22 they are purporting for the opinions of the property owners on the island?"

1 Q. DO YOU HAVE CONCERNS ABOUT HOW RECOMMENDATIONS ARE BEING
2 IMPLEMENTED WITH REGARD TO THE WATER AND SEWER UTILITY?

3 A. Yes. Just before the Weds Jan. 24th PSC meeting that the 393 folks attended, uprights on the
4 island were spray painted blue or green and looks like vandalism and some non-inuse uprights were
5 cutoff to the ground. My concern and I did voice my concern a couple of times in different
6 meetings, is who did this, why was this done and how were the pipes identified? My sewer tap was
7 not marked, which means it was not identified. If this were done according to AsBuilt drawings or
8 blueprints, it would've been identified. The 393 board implied that this was done due to our
9 concern about identifying and labeling of water vs. sewer pipes. Phil Hiley told me this was done
10 without the use of drawings. In fact, the AsBuilt drawings were given to Mr Snyder, 393 board
11 member, the day of the vote. Since the drawings and blueprints were not used, how do we know
12 that what is now spray-painted correct or not? And how many other taps were missed? This way of
13 labeling is not acceptable and unprofessional. I've gotten mixed answers as to who did the spray
14 painting.

15 Q. DO YOU STILL HAVE CONCERNS ABOUT THE 393 CORPORATIONS TAKING
16 OVER RESPONSIBILITY OF THE WATER AND SEWER UTILITIES?

17 A. Yes. See Cathy Orlor's Testimony.

18 Also, according to Mr. Snyder's Testimony and he is on the board for the 393 corporations, the 393
19 corporations have doubts about the transfer now. That is a big statement. This is another reason
20 why the PSC needs to address and resolve the issues from our complaints that we filed over
21 18months ago. The quickest way to resolve the issues are to state that the utilities have been

1 operating illegally as a public utility and have them regulated for a significant period of time that
2 proves our issues are addressed, corrected and resolved through the due course of regulation.

3 A 393 does not resolve issues like membership, issues we have in the bylaws and in general the 'AS
4 IS' statement that goes with the transfer of assets and the history of the system. The past actions of
5 Folsom Ridge have made it very difficult to trust them now with an 'AS IS' statement.

6 Another issue is that they don't have much of a reserve that would be used when there are problems
7 and maintenance that come up with the system and operations. In addition, they are not preparing
8 to add to the reserve realistically and/or responsibly. In the Saturday meeting for the homeowners,
9 the 393 supporters stated that the fees to be quite a bit less than Folsom Ridge or the PSC came up
10 with, even if you take off the profit for FR and the 9% for PSC. A lady in the Saturday meeting
11 stated \$35 vs. \$63 it's a no brainer! Phil Hiley had just stated that FR and PSC came within a few
12 dollars of each other and it was around \$63. If you subtract 20%, which is high (for FR and PSC)
13 that still comes out to roughly \$50, not \$35. If the fees were more realistic, then there just might be
14 more supporters for regulation as it would be extra insurance for the integrity of the system and
15 operations. If the fees were more in line with what should be charged, in a year, there could be
16 roughly \$10k additional in reserve. Mr. Richard Groves tried to bring this discrepancy up for
17 conversation, but the 393 supporters overtook his voice and moved on to another Q&A.

18 Q. DO YOU STILL WANT REGULATION OF THE WATER AND SEWER
19 UTILITIES?

20 A. Yes. I think it is the only solution to mine and my Dad's issues and concerns at this time.

1 Q. DID YOU PROVIDE AN APPLICATION TO INTERVENE IN THE CASE # WO-
2 2007-0277?

3 A. Yes. However, it was confusing with this case being combined when I was to provide testimony
4 and before I knew it, there was an order saying I had 1 day to respond to the WO-2007-0277 case?
5 How were the other Intervenors to know when and how to provide testimony? The timeframe was
6 not the same as in the application case.

7 Q. DO YOU HAVE EVIDENCE FOR STATEMENTS IN THIS TESTIMONY?

8 A. Yes.

9 Q. ARE YOU AWARE OF AND AGREE WITH THE TESTIMONY OF CATHY ORLER?

10 A. Yes. I have read it and totally agree.

11 Q. ARE YOU AWARE OF AND AGREE WITH THE TESTIMONY OF BEN PUGH?

12 A. Yes. I have read it and totally agree.

13 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

14 A. Yes.

15 **Summary:**

16 I believe that if the utility was regulated by the MPSC most if not all of the issues would not be
17 repeated in the future. Anything outside the jurisdiction of the MPSC still remains and may need
18 further attention. FR and the BIHOA have shown their lack of experience and business ethics with
19 operating a water and sewer utility by allowing the improper installation of the utility, the additional

1 violations, billing non-members who are not receiving service after they had in writing we would
2 not be billed until we started receiving service, intimidating and coercing non-members to join the
3 HOA and pay back fees, threatening law suits with regard to back fees when we are not hooked up
4 nor receiving service and trying to stop and ultimately delaying the sell and purchase of property
5 with regard to membership and membership fees/back fees. A 393 would certainly not address our
6 issues, however, being regulated should. We would rather be treated as a customer to a utility that
7 is regulated than be a member of a non-regulated utility company. We own other properties that
8 receive utility service from regulated utilities and feel it is like having additional insurance knowing
9 that the utilities conform to regulations and standards above and beyond DNR and state of MO.
10 Statutes.

11 These actions and negative publicity do not increase our property value nor do they help our
12 community mind-set. They have only hurt our community that used to be close nit and neighborly
13 like; now divided. In order for our property values to increase, to re-create a neighborhood like we
14 had and that will attract others, we need a regulated public utility. We need assurance that these
15 same issues will not keep re-occurring. This also means that a 393 will not resolve our issues as a
16 393 is not regulated and there would be no guarantee that minimum regulations, standard practices
17 and procedures would be followed or enforced. Let alone the intimidation and coercing to hook up
18 to the system and possible lawsuits.

19 What will it take for all water and sewer utilities created to be regulated before the creation of the
20 entity owning and operating them? After the utility proves itself, it could be transferred to a non
21 regulated entity if they wish. It seems to me that it is as important, if not more important as the

1 regulations on the lake for docks and vessels and power utilities. The lake's planning and zoning
2 committees are approving or have approved so much development in the recent years and years to
3 come, that there will be a backlash/domino affect at some point where there will be a 'costly catch
4 up' period. AmerenUE put regulations in with grandfathering several years ago. Now they will be
5 able to catch up and enforce new docks that were damaged due to the ice and snow that has
6 destroyed or damaged docks most of which didn't meet their regulations due to grandfathering.
7 Why can't the water and sewer utilities and the MPSC be proactive to prevent a major disaster
8 before it happens and costly catch up later? A major disaster is bound to happen when non-
9 certificated water and sewer utilities are allowed to operate in the manner they have on Big Island.