

1 STATE OF MISSOURI
 2 PUBLIC SERVICE COMMISSION
 3
 4 TRANSCRIPT OF PROCEEDINGS
 5 Hearing
 6 March 30, 2007
 7 Jefferson City, Missouri
 8 Volume 8
 9
 9 Cathy J. Orlor,)
)
 10 Complainant,)
)
 11 v.) Case No. WC-2006-0082
) et al.
 12 Folsom Ridge, LLC, Owning and)
 Controlling the Big Island)
 13 Homeowners Association,)
)
 14 Respondent.)
 15
 In the Matter of the Application)
 16 of Folsom Ridge, LLC, and Big)
 Island Homeowners Water and Sewer)
 17 Association, Inc. For an Order)
 Authorizing the Transfer and) Case No. WO-2007-0277
 18 Assignment of Certain Water and)
 Sewer Assets to Big Island Water)
 19 Company and Big Island Sewer)
 Company, and in Connection)
 20 Therewith Certain Other Related)
 Transactions.)
 21 HAROLD STEARLEY, Presiding,
 REGULATORY LAW JUDGE.
 22
 STEVE GAW,
 23 LINWARD "LIN" APPLING,
 COMMISSIONERS.
 24
 25

1 REPORTED BY:
2 KELLENE K. FEDDERSEN, CSR, RPR, CCR
3 MIDWEST LITIGATION SERVICES
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 APPEARANCES:

2 MARK W. COMLEY, Attorney at Law
3 Newman, Comley & Ruth
4 601 Monroe, Suite 301
5 P.O. Box 537
6 Jefferson City, MO 65102
7 (573) 634-2266

8 FOR: Folsom Ridge, LLC.
9 Big Island Homeowners Water and Sewer
10 Association.

11 CHARLES E. McELYEA, Attorney at Law
12 Phillips, McElyea, Carpenter & Welch
13 85 Court Circle
14 Camdenton, MO 65020
15 (573) 346-7231

16 FOR: Big Island Homeowners Water and Sewer
17 Association.

18 PAMELA HOLSTEAD, Attorney at Law
19 3458 Big Island Drive
20 Roach, MO 65787
21 (573) 317-1198

22 FOR: Big Island Water Company.
23 Big Island Sewer Company.

24 CATHY ORLER, pro se
25 3252 Big Island Drive
Roach, MO 65787
(573) 317-1490

FOR: Pro Se Complainant.

CINDY FORTNEY, pro se
3298 Big Island Drive
Roach, MO 65787
(573) 346-7613

FOR: Pro Se Complainant.

BENJAMIN D. PUGH, pro se
1780 Big Island Drive
Roach, MO 65787
(573) 346-4336

1 LEWIS R. MILLS, JR., Public Counsel

P.O. Box 2230

2 200 Madison Street, Suite 650

Jefferson City, MO 65102-2230

3 (573) 751-4857

4 FOR: Office of the Public Counsel
and the Public.

5

JENNIFER HEINTZ, Assistant General Counsel

6 P.O. Box 360

200 Madison Street

7 Jefferson City, MO 65102

(573) 751-3234

8

FOR: Staff of the Missouri Public
Service Commission.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 JUDGE STEARLEY: All right. Let's bring
3 this hearing to order. Good morning. Today is Friday,
4 March 30th, 2007, and we are here for a limited ancillary
5 hearing in Case Nos. WC-2006-0082, et al, Cathy J.
6 Orler vs. Folsom Ridge, LLC and Big Island Homeowners
7 Association and Water and Sewer Association, Incorporated,
8 f/k/a Big Island Homeowners Association, and Case
9 No. WO-2007-0277, in the matter of the application of
10 Folsom Ridge, LLC and Big Island Homeowners Water and
11 Sewer Association, Incorporated for an order authorizing
12 the transfer and assignment of certain water and sewer
13 assets to Big Island Water Company and Big Island Sewer
14 Company and in connection therewith certain other related
15 transactions.

16 The original evidentiary hearing was held
17 in this matter February 28th through March 2nd, and we are
18 here for this limited proceeding for the taking of some
19 additional testimony today. My name is Harold Stearley.
20 I'll be the Regulatory Law Judge presiding over this
21 matter. Our court reporter this morning is Kellene
22 Feddersen.

23 And we will begin by taking entries of
24 appearance, beginning with the Staff of the Missouri
25 Public Service Commission.

1 MS. HEINTZ: Jennifer Heintz for the Staff
2 of the Missouri Public Service Commission, P.O. Box 360,
3 Jefferson City, Missouri 65102.

4 JUDGE STEARLEY: Thank you, Ms. Heintz.
5 With the Office of Public Counsel?

6 MS. BAKER: Christina Baker, P.O. Box 2230,
7 Jefferson City, Missouri 65102. I'm substituting for
8 Lewis Mills who entered an appearance in the hearing
9 earlier. I'm appearing for the Office of Public Counsel
10 and for the ratepayers.

11 JUDGE STEARLEY: Thank you, Ms. Baker. For
12 Folsom Ridge and the Association.

13 MR. COMLEY: Good morning, Judge Stearley.
14 Let the record reflect the entry of appearance of Mark W.
15 Comley, Newman, Comley & Ruth, 601 Monroe Street,
16 Suite 301, Jefferson City, Missouri. And also appearing
17 on behalf of Folsom Ridge and the Homeowners Water and
18 Sewer Association is Mr. Charles E. McElyea, the gentleman
19 on my left, Phillips, McElyea, Carpenter & Welch, PC,
20 85 Court Circle, P.O. Box 559, Camdenton Missouri 65020,
21 again appearing on behalf of Folsom Ridge, LLC and Big
22 Island Homeowners Water and Sewer Association, Inc.

23 JUDGE STEARLEY: Thank you, Mr. Comley.
24 For Big Island Water Company and Big Island Sewer Company?

25 MS. HOLSTEAD: My name is Pamela Holstead.

1 I'm the attorney representing the Intervenors, Big Island
2 Water Company and Big Island Sewer Company. My address is
3 3458 Big Island Drive, Roach, Missouri 65787.

4 JUDGE STEARLEY: Thank you, Ms. Holstead.
5 For Complainants, Cathy J. Orlor?

6 MS. ORLER: Cathy Orlor, 3252 Big Island
7 Drive, Roach, Missouri 65787, Complainant.

8 JUDGE STEARLEY: And Complainant
9 Benjamin D. Pugh?

10 MR. PUGH: Benjamin D. Pugh. I'm
11 Complainant. I live at 1780 Big Island Drive, Roach,
12 Missouri 65787.

13 JUDGE STEARLEY: And Complainant Cindy
14 Fortney?

15 MS. FORTNEY: Cindy Fortney, 3298 Big
16 Island Drive, Roach, Missouri 65787.

17 JUDGE STEARLEY: Are there any other
18 parties here that need to enter their appearance this
19 morning? Seeing none, let the record reflect that no
20 other parties have entered their appearance.

21 There's a few initial procedural matters
22 I'd like to take up with the parties as far as the
23 proceedings today. There will be no opening or closing
24 arguments or statements. Those were done at our primary
25 hearing. So we're going to move straight into taking the

1 testimony from our witnesses this morning.

2 On our witness list this morning I have
3 Mr. James T. Crowder for Folsom Ridge and the Association,
4 responses from Cathy J. Orler, Benjamin D. Pugh and Staff
5 from Mr. James Merciel, and that will be the order of
6 witnesses this morning.

7 Order of cross-examination will be as
8 follows: For Folsom Ridge's witness, it will be
9 Chapter 393 companies, followed by Staff, OPC and then
10 Complainants. For the Complainants it will be OPC,
11 followed by Staff, Chapter 393 companies and Folsom Ridge
12 and the Association. And for Staff's witness, it will be
13 Complainants, OPC, 393 companies and Folsom Ridge and the
14 Association.

15 This ancillary hearing is limited strictly
16 to the additional testimony, the subject matter that was
17 contained in Mr. Crowder's filing of direct testimony.
18 And consequently, just advising everyone, if any of the
19 testimony, cross-examination, et cetera, will exceed the
20 scope of that testimony, I will be sustaining objections
21 to that and those types of questionings will be -- answers
22 will be excluded from the record.

23 Are there any other procedural matters we
24 need to take up at this time? Very well. You may call
25 your witness, Mr. Comley.

1 MR. COMLEY: Thank you, Judge Stearley.
2 For the record, I want to give a sincere thanks to the
3 Commission for the opportunity to provide additional
4 testimony about this particular issue. We would call
5 Mr. James T. Crowder.

6 JUDGE STEARLEY: Mr. Crowder, if you'll
7 take the witness stand.

8 MR. COMLEY: Are we on 106?

9 JUDGE STEARLEY: Yes, we are. Are we
10 marking the direct testimony as Exhibit 106?

11 MR. COMLEY: Yes.

12 JUDGE STEARLEY: And surrebuttal of
13 Mr. Crowder will be 107.

14 MR. COMLEY: Yes.

15 (EXHIBIT NOS. 106 AND 107 WERE MARKED FOR
16 IDENTIFICATION BY THE REPORTER.)

17 JUDGE STEARLEY: Mr. Crowder, I will swear
18 you in as a witness now.

19 (Witness sworn.)

20 JUDGE STEARLEY: All right. As a reminder,
21 before we start with the questioning, if everyone would
22 please have their cell phones, Blackberries, et cetera,
23 turned off. I forgot to mention that earlier. We did
24 have some recording problems with our last hearing, and we
25 did have also some of the camera presets were actually

1 jumping around. So I'm not sure why we have that type of
2 interference, but if you can please turn those electrical
3 apparatus off.

4 And with that, you may proceed, Mr. Comley.

5 MR. COMLEY: Thank you, Judge Stearley.

6 JAMES T. CROWDER testified as follows:

7 DIRECT EXAMINATION BY MR. COMLEY:

8 Q. Mr. Crowder, would you state your full name
9 for the reporter, please.

10 A. James Thomas Crowder.

11 Q. And would you tell the Commission by whom
12 you're employed.

13 A. Folsom Ridge.

14 Q. And in connection with this case, did you
15 cause to be filed a set of direct testimony and
16 surrebuttal testimony in written form?

17 A. Yes.

18 Q. And have those been marked for
19 identification purposes today as Exhibit 106, your direct
20 testimony, and Exhibit 107, your surrebuttal testimony?

21 A. Yes.

22 Q. Mr. Crowder, if I were to ask the questions
23 that are set forth in Exhibits 106 and 107, would your
24 answers to the questions contained therein be the same
25 today?

1 A. Yes, they would.

2 MR. COMLEY: Your Honor, based upon
3 Mr. Crowder's answers, I offer into evidence Exhibit
4 Nos. 106 and 107.

5 JUDGE STEARLEY: All right. Are there any
6 objections to the offering of Exhibits 106 and 107?

7 (No response.)

8 JUDGE STEARLEY: Hearing none, they shall
9 be received and admitted into evidence.

10 (EXHIBIT NOS. 106 AND 107 WERE RECEIVED
11 INTO EVIDENCE.)

12 MR. COMLEY: With that, I tender
13 Mr. Crowder for cross-examination.

14 JUDGE STEARLEY: All right.
15 Cross-examination by the Chapter 393 companies?

16 MS. HOLSTEAD: Your Honor, no cross by the
17 393s.

18 JUDGE STEARLEY: Thank you, Ms. Holstead.
19 By Staff?

20 MS. HEINTZ: Thank you, your Honor. No
21 questions.

22 JUDGE STEARLEY: Thank you, Ms. Heintz.
23 Office of Public Counsel.

24 CROSS-EXAMINATION BY MS. BAKER:

25 Q. Good morning, Mr. Crowder.

1 A. Good morning.

2 Q. My name is Christina Baker, and I'm from
3 the Office of Public Counsel. I just have a few questions
4 regarding your testimony today. Do you have copies of
5 your testimony in front of you?

6 A. No, I don't.

7 Q. Okay. Let's start on the first page of
8 your surrebuttal testimony. I'm looking specifically at
9 lines 19 through 21. So in your surrebuttal testimony,
10 there in lines 19 through 21, you state that as part of
11 the water line replacement, flexible piping was used to
12 connect the water main to the existing customer service
13 lines that extended to the customer's home; isn't that
14 correct?

15 A. Which page are you on?

16 Q. The first page of the testimony itself,
17 lines 19 through 21. The surrebuttal. That would be
18 Exhibit 107.

19 A. I'm sorry. Okay.

20 Q. And so on that page, on lines 19 through
21 21, you state that as part of the water line replacement,
22 flexible piping was used to connect the water main to the
23 existing customers' service lines that extended to the
24 customers' homes; isn't that correct?

25 A. That's correct.

1 Q. Can you explain for me what the purpose of
2 the blue -- of the flexible piping is in that regard?

3 A. The reason I used it?

4 Q. No. The purpose of it.

5 A. To directly get water from the main service
6 line to the service connections that was already at these
7 homes.

8 JUDGE STEARLEY: Excuse me. Mr. Crowder,
9 could you please try and speak a little more directly into
10 the microphone? It helps us with our recording.

11 THE WITNESS: Okay.

12 JUDGE STEARLEY: Thank you.

13 BY MS. BAKER:

14 Q. So would it be an accurate statement to say
15 that the flexible piping was used as, say, a trunk line
16 from the main?

17 A. Right. It's a -- I would look at it maybe
18 as a main service line. It's a distribution line off of
19 the main.

20 Q. Okay. So it is -- it is a main line?

21 A. It's the main line off of the main. It's
22 the main distribution line that takes the water to the
23 home.

24 Q. Okay. It is not a service line going into
25 the customers' homes?

1 A. No. No.

2 Q. Okay. And also in your -- in your
3 surrebuttal testimony, I'm also looking on page 1, moving
4 into page 2, there's a statement that says, it would be
5 more accurate to refer to the flexible piping as a service
6 connection, not a customer service line; isn't that true?

7 A. That's true.

8 Q. So technically this would be a main where
9 service lines were trunking off of that main?

10 A. It's an arm off of a main, yes.

11 Q. All right. In your direct testimony, you
12 stated that you were responsible for approving and
13 sometimes purchasing the materials the contractor used in
14 the water main replacement project.

15 A. Yes, ma'am.

16 Q. That was part of the DNR stipulation or
17 agreement.

18 A. Uh-huh.

19 Q. Was installing that blue flexible piping
20 that we've been discussing, basically a main, is that part
21 of the water main replacement project?

22 A. Yes, ma'am.

23 Q. Okay. Who determined what piping to
24 utilize in the replacement of that water line project?

25 A. I did.

1 Q. There were other choices for the piping
2 that was utilized in that project; isn't that correct?

3 A. Yes, ma'am.

4 Q. If you had determined that the contractor's
5 choice of piping was too expensive, would you not -- or
6 would you decline to approve that material for the
7 project?

8 A. No. This blue piping is a lot more
9 expensive than the other piping.

10 Q. So would you agree that cost was a major
11 consideration in approving the choice of the flexible
12 piping?

13 A. Cost had nothing to do with the decision.

14 Q. Okay. What were the main reasons for using
15 the blue flexible piping?

16 A. Because these connections on the causeway,
17 the main was in the lower road, and we had to go up to the
18 upper road. With the flexible piping, we could install it
19 in one solid pipe. If we used the other PVC or whatever
20 we were using, you would have to use 90s, other elbows,
21 which we felt would give us more -- to say we could have
22 leaks in three or four different places. This way we've
23 got a solid pipe and we don't have -- we discontinued
24 using the elbows, and we felt that this was the best way
25 to go and the safest.

1 Q. How many of these trunk mains are there
2 along the large main? How many have been installed?

3 A. I can't tell you. There's -- I believe
4 it's possibly eight. The houses on the upper causeway.

5 Q. And how many houses do each of these
6 flexible pipe mains feed?

7 A. One.

8 Q. They feed one house alone?

9 A. Right.

10 Q. Do they have the capability of feeding more
11 than one house?

12 A. They can feed two, yes.

13 Q. And the reason why they only feed one at
14 this point is why?

15 A. Now, I'm going to back up here. We hooked
16 up to the existing service lines. I'm not going to --
17 it's hard for me to say. Maybe there was two houses on
18 one. I don't believe so. But if there is, it's allowed.
19 A one-inch can service two houses. But I believe they
20 were all singles.

21 Q. But again, these are not the customers'
22 private service lines?

23 A. These aren't, no.

24 Q. This is a main --

25 A. These are the main.

1 Q. -- that is available for up to two houses?

2 A. Right. And we hooked up to the existing
3 lines.

4 Q. And there are eight of these,
5 approximately?

6 A. Approximately.

7 Q. Approximately eight of these --

8 A. Right.

9 Q. -- throughout the system?

10 A. Uh-huh.

11 Q. And each has the capability of feeding two
12 houses?

13 A. One-inch line will service two houses, yes.

14 Q. All right. Does any of this blue flexible
15 piping come within ten feet of a sewer line as it is
16 installed?

17 A. Yes.

18 MS. BAKER: No further questions.

19 JUDGE STEARLEY: Thank you, Ms. Baker.

20 Cross-examination by Complainants, beginning with
21 Ms. Orler.

22 CROSS-EXAMINATION BY MS. ORLER:

23 Q. Mr. Crowder, I'm going to be taking your
24 testimonies, both your direct testimony and your
25 surrebuttal testimonies, very slowly because I think for

1 all parties involved, including the Commission, we need a
2 very definite clarification and a common terminology to be
3 used by everyone so that we all know specifically what it
4 is we're talking about and describing.

5 I'll start with your direct testimony,
6 page 1, line 21. You state that you are currently
7 employed by Diamond G Enterprises as a property and
8 construction manager. To whom do you answer directly
9 within that company?

10 A. Reggie Golden.

11 Q. Okay. And what is the business address for
12 Diamond G Enterprises?

13 A. Post Office Box 54, Longmont, Colorado,
14 80501.

15 Q. Thank you. Now, on page 2 of your direct
16 testimony, on line 3, you state that you are also
17 currently employed by Folsom Ridge; is that correct?

18 A. That's true.

19 Q. And to whom do you answer directly within
20 Folsom Ridge?

21 A. Reggie Golden.

22 Q. Do you answer directly to Rick Rusaw as
23 well?

24 A. No.

25 Q. And why is that?

1 A. Because I'm employed by Reggie Golden.

2 Q. So in your capacity of employment with
3 Folsom Ridge that consists of two equal partners, you're
4 only employed by one of those partners, which is Reggie
5 Golden?

6 MR. COMLEY: Your Honor, I'm going to
7 object to the line of questioning. I think it is
8 irrelevant to the nature of the limited issue we have in
9 front of us. The employment history of this person has
10 already been of record, and there's no reason to go into
11 any detail about it.

12 JUDGE STEARLEY: Why do you think this is
13 relevant, Ms. Orler?

14 MS. ORLER: Because the complaints that
15 were filed were against Folsom Ridge owning and
16 controlling the homeowners association.

17 JUDGE STEARLEY: That is a matter of record
18 as far as the complaints and it is not relevant to this
19 particular subject matter for today's hearing, and as
20 Mr. Comley states, the employment history is right here in
21 Mr. Crowder's testimony. I will sustain the objection.

22 BY MS. ORLER:

23 Q. All right. I'd like to ask you if you also
24 take direct instruction from Mr. Krehbiel, the engineer
25 from this project, or Krehbiel?

1 A. Yes, I worked with Mr. Krehbiel. He drew
2 the plans.

3 Q. And do you --

4 A. And he did the inspections.

5 Q. And do you take direct instruction from
6 him?

7 A. Yes.

8 Q. Okay. And what is the business address of
9 Folsom Ridge, please?

10 A. Same as Diamond G.

11 Q. Same as Diamond G. Okay. I'll direct your
12 attention now to page 2, lines 4 and 5 of your direct
13 testimony. Could you please explain to the Commission
14 your understanding of the settlement agreement, please?

15 MS. HEINTZ: Your Honor, I'm going to
16 object here. Mr. Crowder's understanding of the
17 settlement agreement is not relevant to his testimony.

18 MR. COMLEY: I'll join the objection. I
19 think it's far beyond the competence of Mr. Crowder to
20 explain the details of a settlement agreement. It's
21 sufficient enough that he knew the settlement agreement
22 was in existence and he was operating pursuant to it.

23 JUDGE STEARLEY: That will be sustained.

24 BY MS. ORLER:

25 Q. Can you please explain, then, the project

1 scope of the settlement agreement as you understand it and
2 are responsible for?

3 A. Which part of it?

4 Q. The entirety of the scope of the project
5 necessary to fulfill the settlement agreement.

6 MR. COMLEY: I'm going to raise the same
7 objection. I think this is beyond the scope of the
8 witness' testimony and is not relevant to the issue that's
9 in front of the Commission right now.

10 JUDGE STEARLEY: That is beyond the scope,
11 Ms. Orler. I will sustain the objection.

12 BY MS. ORLER:

13 Q. May I ask you what your responsibilities
14 were for the -- for -- as project manager for the
15 settlement agreement?

16 A. To make sure the work that was completed
17 was done properly.

18 Q. And how did you know what work that was?

19 A. We had plans and specifications that were
20 approved by DNR, and that's -- we installed it according
21 to those plans.

22 Q. So you worked specifically from plans and
23 specifications --

24 A. Yes.

25 Q. -- submitted to DNR?

1 A. Right.

2 Q. Can you tell me, does Kenny Carroll answer
3 directly to you?

4 A. Yes.

5 Q. Did you hire Mr. Carroll for the
6 replacement line project?

7 A. Yes, I did.

8 Q. So Mr. Carroll is under your direct
9 employment?

10 A. He was at the time, yes.

11 Q. Can you explain to the Commission what
12 Mr. Carroll's credentials and any types of formal training
13 may be for the installations that he does as a part of
14 this project?

15 A. I don't feel I should be talking for him on
16 his credentials. I don't know all that.

17 Q. Then if you were response--

18 A. He's a licensed contractor in the state of
19 Missouri, yes.

20 Q. And was that the only credential under
21 which he was hired by you for this project?

22 A. Yes.

23 Q. Simply because he was a licensed
24 contractor, that was --

25 A. And he had worked for us before and done a

1 lot of work for us and he does good work.

2 Q. Okay. Now, when you mention that he had
3 worked for you before and does good work, can you explain
4 to us what that work was and when he worked for you,
5 please?

6 A. We built homes. He put in septic at a
7 house for us. You know, I don't know how far -- where
8 you're going with this, you know. He's a licensed
9 contractor. He took the job. He did the work. He worked
10 for me. I don't know what else you're after.

11 Q. Okay. Maybe I can be more specific for
12 you, then. Can you tell us if Mr. Carroll performed work
13 either for you, Folsom Ridge, or with regards to the
14 installation of the water and sewer system for the
15 original installation in Phase 1, which took place during
16 the years 1998 through, I believe, possible completion
17 around the year 2000?

18 A. That was before I started working there.

19 Q. Do you have personal knowledge?

20 A. I have no knowledge of what went on. I
21 wouldn't speak of anything until I was involved because I
22 don't know what was going on.

23 Q. So when you stated previously that
24 Mr. Carroll had worked for you before, can you define
25 before?

1 MS. HEINTZ: Your Honor, I'm going to
2 object. I think this question has been asked and
3 answered.

4 JUDGE STEARLEY: I believe it has been
5 answered, but I also find this line of questioning to be
6 getting off track from the scope of the specifics around
7 the installation of this blue connecting line. So I will
8 sustain the objection.

9 BY MS. ORLER:

10 Q. Mr. Crowder, would it be your understanding
11 that the purpose or intent of the settlement agreement was
12 to allow and ensure for the correct installation of the
13 water and sewer system as it was applied for in the
14 application permit for construction and as permitted by
15 DNR in the issuance of the construction permit?

16 MR. COMLEY: First, the question is
17 irrelevant. It's beyond the scope of what this witness is
18 testifying to. Also, the question is ambiguous and
19 confusing.

20 JUDGE STEARLEY: I would sustain. If you
21 can break that question down and it somehow is relevant to
22 the scope of this hearing today, you can try again, but I
23 don't see how that particular question is relevant.

24 BY MS. ORLER:

25 Q. With the reinstallation that was done for

1 the water line replacement, this water line replacement
2 was replacing what?

3 A. The old water line that was installed in
4 the same trench with the sewer.

5 Q. The old water line that was installed in
6 the same trench with the sewer?

7 A. Right.

8 Q. And why was the old water line installed
9 incorrectly in the same trench with the sewer?

10 A. I have no idea.

11 MS. HEINTZ: I'm going to object. I don't
12 think Mr. Crowder was involved in the installation of the
13 original system, and he can't answer those questions.

14 JUDGE STEARLEY: This hearing is
15 specifically to be examining the issues around the service
16 connection lines, and that is the scope of this ancillary
17 proceeding. I will sustain the objection.

18 MS. ORLER: All right. May I grab a paper,
19 your Honor?

20 JUDGE STEARLEY: Yes, you may.

21 MS. ORLER: I'd like to reference an
22 exhibit that has already been submitted in this hearing,
23 and it's Exhibit No. 78. It was submitted by the
24 Respondents. It is an application for construction permit
25 for the construction of water and sewer lines on Big

1 Island. May I show this to the witness?

2 JUDGE STEARLEY: Yes, you may.

3 BY MS. ORLER:

4 Q. If you can familiarize yourself with this
5 area here (indicating).

6 Thank you. We've been discussing a
7 replacement of a water line that was not installed
8 correctly as per the original application and construction
9 permit.

10 MR. COMLEY: I'll object to the testimonial
11 nature of the question, if there was a question.

12 JUDGE STEARLEY: Ms. Orler, I assume you
13 were starting to set up a question there?

14 MS. ORLER: Yes.

15 JUDGE STEARLEY: Go ahead and complete your
16 question.

17 BY MS. ORLER:

18 Q. If you relied on plans and specifications
19 for yourself as project manager within the parameters of
20 your responsibility, can you tell me why those plans and
21 specifications were not followed with the original Phase 1
22 installation?

23 MS. HEINTZ: Your Honor, again, Mr. Crowder
24 was not involved in the original installation. He cannot
25 answer questions relating to why work was done a certain

1 way at that time.

2 MR. COMLEY: Furthermore, the question is
3 complex and compound.

4 JUDGE STEARLEY: And it's getting well
5 beyond the limited scope of these proceedings today. I
6 will sustain the objections.

7 BY MS. ORLER:

8 Q. Okay. Are you acquainted with a gentleman
9 by the name of Ronnie Testerman?

10 A. Not to my knowledge.

11 Q. Has your work as project manager for the
12 replacement of the water line on Big Island and that work
13 been completed?

14 MS. HOLSTEAD: Objection, your Honor. Once
15 again, we're moving into the replacement of the water
16 line, which has been firmly established is irrelevant to
17 the proceedings today.

18 JUDGE STEARLEY: The questioning needs to
19 surround the replacement or the installation rather of the
20 service connection lines. I will sustain the objection.

21 BY MS. ORLER:

22 Q. Can you tell me if the installation of the
23 service lines had been completed?

24 A. Yes.

25 Q. Your answer is yes?

1 A. Yes.

2 MS. ORLER: Can I show this to the witness?

3 JUDGE STEARLEY: If you will mark this with
4 the court reporter, it will be marked as Exhibit No. 108.

5 (EXHIBIT NO. 108 WAS MARKED FOR
6 IDENTIFICATION BY THE REPORTER.)

7 BY MS. ORLER:

8 Q. Mr. Crowder, I'd like for you to acquaint
9 yourself with the photographs I've presented to you,
10 please.

11 JUDGE STEARLEY: Did all counsel get a copy
12 as well? You may proceed, Ms. Orler.

13 BY MS. ORLER:

14 Q. Mr. Crowder, these were photographs that
15 were taken this month by Mr. Pugh and myself. There's an
16 affidavit attached.

17 MR. COMLEY: I object to this. This is not
18 the way to lay foundation for these photographs. This is
19 testimonial in nature, and it is improper to introduce
20 these photographs and for use with this witness.

21 JUDGE STEARLEY: The photographs have not
22 been authenticated and no foundation has been laid for
23 them at this time. You can ask questions regarding
24 Mr. Crowder's direct impression of looking at those at
25 this moment. You will not be allowed to offer them into

1 evidence unless there's some type of foundation laid at
2 another point in the proceeding.

3 MS. ORLER: I understand.

4 JUDGE STEARLEY: And, Mr. Crowder, you may
5 answer questions only to the extent of your knowledge and
6 your ability to determine anything from these particular
7 photographs because they've not been authenticated or
8 anything at this point in time.

9 BY MS. ORLER:

10 Q. Mr. Crowder, from looking at these
11 photographs, can you distinguish as to whether or not
12 these are the lines that we have been discussing that are
13 connected to the main line that you refer to as main trunk
14 distribution lines?

15 A. Well, the first one I know for sure is.
16 Some of them are, yes. I can see that some of them are.
17 Some of them I wouldn't know.

18 Q. All right. Thank you. Now, you just
19 stated that the water line replacement was complete. Can
20 you tell us why these lines were not separated by ten feet
21 as indicated with the tape in the photos?

22 MR. COMLEY: I would ask the examiner to
23 point to the -- to which photographs Mr. Crowder can
24 identify as to the answer to those questions. He has not
25 identified which ones he specifically knows about.

1 JUDGE STEARLEY: Ms. Orler, Mr. Crowder
2 will have -- you'll have to take those picture by picture
3 as to which he can identify, and then you'll need to
4 discuss each picture individually so that all the parties
5 here know which one you're referring to.

6 MS. ORLER: I apologize.

7 BY MS. ORLER:

8 Q. Page 1, it's identified as Orler. This is
9 my property.

10 A. Yes.

11 Q. And can you please explain for us, if the
12 water line replacement has been complete, why this water
13 line was not separated by a minimum separation of ten
14 feet?

15 A. This one I can tell you exactly why. We
16 were installing this line. We had it across the road at
17 more than ten feet. When they was ready to set this water
18 service line stub up, Ms. Orler asked them to move it back
19 against the wall so she could put it in her landscaping.

20 The contractor called me at the time and
21 asked me what he should do. He said, it's an extra ten
22 feet. I said, if she wants it, give it to her, you know.
23 And that's -- I didn't know exactly where she installed it
24 at that time, but that is exactly where Ms. Orler
25 requested that line to go and that's why it's there.

1 Q. Now, Mr. Crowder, do you think that I would
2 request --

3 MS. HEINTZ: I object. That calls for
4 speculation.

5 JUDGE STEARLEY: Sustained.

6 BY MS. ORLER:

7 Q. I'd like to rephrase that. Why would I
8 request that this line be placed at a lesser separation
9 than ten feet?

10 MS. HEINTZ: Your Honor, I have the same
11 objection.

12 JUDGE STEARLEY: And it will be sustained.

13 BY MS. ORLER:

14 Q. Do you recall a conversation that I had
15 with you personally the day that this was being installed?

16 A. No.

17 Q. You don't?

18 A. No.

19 MS. ORLER: (Inaudible.)

20 THE REPORTER: Judge, when she's talking to
21 you, do you want this on the record? I can't hear what
22 she's saying.

23 JUDGE STEARLEY: Please speak up.

24 MS. ORLER: This does reference a
25 conversation that I had with Mr. Crowder regarding the

1 proper placement of my line.

2 JUDGE STEARLEY: We can mark it as
3 Exhibit 109.

4 (EXHIBIT NO. 109 WAS MARKED FOR
5 IDENTIFICATION BY THE REPORTER.)

6 BY MS. ORLER:

7 Q. Have you had a chance to review this
8 document, Mr. Crowder?

9 A. Okay.

10 Q. Does this help refresh your memory with
11 regards to the installation of my line?

12 A. No, it does not. I never talked to you
13 about this.

14 Q. You don't recall a conversation that you
15 and I had in my driveway with regards to installing my
16 water line correctly as per the settlement agreement and I
17 handed you a copy of a letter given to me by Mr. David
18 Lees and your response to --

19 A. I remember that con--

20 MS. HOLSTEAD: Objection, your Honor. This
21 is testimony and the question's been asked and answered.

22 JUDGE STEARLEY: The question has been
23 asked and answered, and the objection will be sustained.

24 BY MS. ORLER:

25 Q. Let's move on, then, to some other

1 photographs, page 2. Can you please explain to us why
2 this water and sewer does not have a minimum separation of
3 ten feet?

4 JUDGE STEARLEY: Ms. Orlor, before you ask
5 questions about each of the individual pictures, please
6 ask Mr. Crowder if he can identify those pictures, because
7 I believe his earlier testimony was that he could
8 recognize some but not all. So please ask that as a
9 preliminary question.

10 BY MS. ORLER:

11 Q. Do you recognize this location of the
12 Youngblood and Shores residence on page 2?

13 A. Well --

14 Q. On page 2 of the photographs.

15 A. There's so many around the island. I mean,
16 I'm sure they're there, but I can't tell you exactly which
17 ones they are, no.

18 Q. Do you have an idea why these weren't
19 separated by ten feet?

20 MR. COMLEY: Again, there's no foundation
21 laid for the question. The exhibit has not been admitted
22 properly, and questions to this witness about that exhibit
23 are improper and I object.

24 JUDGE STEARLEY: Assumes facts not in
25 evidence. I will sustain the objection.

1 BY MS. ORLER:

2 Q. Page 3, photograph 3, there's a description
3 above the photograph indicating that this is a vacant
4 property, a for sale sign by Deb Brayton next to --

5 MR. COMLEY: Your Honor, I object to the
6 descriptions given by the examiner regarding these
7 exhibits. They've been proposed for the witness to
8 identify, and they don't need any more identification
9 except the witness. I think it's an improper use of the
10 questioning to describe these for the witness.

11 JUDGE STEARLEY: The description actually
12 becomes testimony, Ms. Orler, and I will sustain the
13 objection. Ask, as I instructed earlier, as your
14 preliminary question if Mr. Crowder can identify the
15 pictures just from looking at them before you proceed with
16 any other questioning.

17 BY MR. ORLER:

18 Q. Can you identify this photograph,
19 Mr. Crowder?

20 A. No, I can't.

21 Q. You cannot. Moving to page 4, photograph
22 4, can you identify this location, Mr. Crowder?

23 A. You lost me. Let me start counting again.

24 Q. There is a description that I won't give
25 you.

1 A. No, I don't know where this is.

2 Q. Next would be page 5, photograph 5. Can
3 you identify this location?

4 A. No.

5 Q. Page 6, photograph 6, can you identify this
6 location?

7 A. I can't identify any of them really because
8 they just were looking at something on the ground. I
9 don't know where they are. I'm sorry.

10 Q. And if you read the description above the
11 photograph telling you their location, this does not help
12 your memory whatsoever?

13 A. You're telling me where they are, but by
14 looking at the picture, I can't tell if that's where it
15 is.

16 Q. Would there be a reason -- since you have
17 said that the water line replacement project is complete,
18 would there be a reason why all of these photographs that
19 I presented to you today would not have been separated by
20 a minimum separation distance of ten feet?

21 MR. COMLEY: I object to the form of the
22 question. It assumes what -- it assumes facts not in
23 evidence.

24 JUDGE STEARLEY: That will be sustained.

25 BY MS. ORLER:

1 Q. How can you tell if the project is
2 complete, Mr. Crowder?

3 MS. HOLSTEAD: Objection, your Honor. Once
4 again, we're back on the water line reinstallation project
5 when the whole scope of the testimony is supposed to be to
6 the blue pipe used on the causeway. I object because it
7 is irrelevant.

8 JUDGE STEARLEY: Questions need to be
9 directed to the service line connections. If you wish to
10 reask with regard to that specific information, you may.

11 BY MS. ORLER:

12 Q. With regards to the service line
13 connections, Mr. Crowder, how can you state that the
14 project has been complete?

15 MR. COMLEY: Argumentative.

16 JUDGE STEARLEY: If you could rephrase your
17 question, Ms. Orler.

18 BY MS. ORLER:

19 Q. The project was to separate the water lines
20 with a minimum separation of ten feet.

21 MS. HEINTZ: I object to that question as
22 testimonial, and it assumes facts not in evidence.

23 MR. COMLEY: It mischaracterizes the
24 settlement agreement as well. I object on that basis,
25 too.

1 JUDGE STEARLEY: Objections will be
2 sustained.

3 BY MS. ORLER:

4 Q. What criteria have you used to state that
5 this project is complete?

6 A. The work was installed per the plans and
7 specifications and the engineer drawings done by Krehbiel
8 Engineering, who, in fact, we paid for daily inspections
9 on this project, and then we had an inspection by DNR
10 after it was complete.

11 Q. And if the project was done per the plans
12 and specifications, what were the plans and specifications
13 under your direction?

14 A. I believe I've stated that. The plans
15 drawn by Krehbiel Engineering and approved by DNR.

16 Q. What were those plans, if you followed
17 plans, that's what you --

18 A. What are you asking? I don't know. I
19 can't figure out your question.

20 Q. If you followed plans --

21 A. Right. Do you want the copy of the plans?

22 Q. I would like your interpretation of those
23 plans that enabled you to do your job and make the
24 determination that this project was complete, please.

25 MR. COMLEY: Your Honor, we're going down a

1 line of questioning I think that's far afield of what the
2 blue flexible piping issue is in this case, and as far as
3 the plans and specifications, they could have been
4 submitted much, much earlier if there was a question about
5 this, and the record is already clear that DNR has
6 approved the installation of this water replacement line.
7 It is already done. It has already been approved by DNR
8 according to the plans and specs.

9 I don't know if there's any much more we
10 can go for this, and I would object to the line of
11 questioning on this.

12 JUDGE STEARLEY: I believe Mr. Crowder has
13 answered the question as best as he can without having
14 plans in front of him where he could read every
15 specification off those plans into the record. So I'm
16 going to sustain the objection.

17 MS. ORLER: If I could present the
18 specifications for Mr. Crowder to read at your suggestion,
19 could I do that, your Honor?

20 JUDGE STEARLEY: Well, if you have the
21 specifications, bring them forward and we'll mark them as
22 an exhibit. Those specifications would have to be
23 authenticated and foundation has to be laid.

24 MS. ORLER: (Inaudible.)

25 THE REPORTER: Ms. Orler, you need to speak

1 out loud. I can't hear you.

2 MS. ORLER: These are authenticated copies
3 that Mr. Pugh and myself picked up at Springfield.
4 There's a notarization and signature. I've left these in
5 the same order. The only thing that I have done is
6 attached Post-It notes to help me in my presentation
7 today.

8 JUDGE STEARLEY: Do you have clean copies
9 here for myself and all the other parties?

10 MS. ORLER: I do, of just the ones with the
11 Post-Its. Not everything that's in here because I'm not
12 utilizing everything.

13 JUDGE STEARLEY: If you'll give me a copy
14 and give a copy to counsel.

15 MS. ORLER: It will take me a few moments
16 to obviously get this.

17 JUDGE STEARLEY: That's fine. And it will
18 be marked as Exhibit 110. How long do you think it's
19 going to take you to --

20 MS. ORLER: If everybody would like a
21 break, that will be okay with me and I'll continue working
22 here.

23 JUDGE STEARLEY: We'll take a short
24 intermission while you get those documents together.

25 (A BREAK WAS TAKEN.)

1 (EXHIBIT NO. 110 WAS MARKED FOR
2 IDENTIFICATION BY THE REPORTER.)

3 JUDGE STEARLEY: All right. We are back on
4 the record. Mr. Crowder, I remind you that since you've
5 retaken the stand that you're still under oath.

6 THE WITNESS: Yes, sir.

7 JUDGE STEARLEY: Ms. Orler, before you
8 proceed, I've looked at what we have marked as
9 Exhibit 110. On page 1 it states the purpose and scope of
10 the report has to do with the replacement and relocation
11 of the existing water line, which we have said is not
12 within the scope of this ancillary proceeding.

13 So before you pursue any line of
14 questioning on this, I'd like to know how you believe this
15 is relevant to today's hearing.

16 MS. ORLER: The two-inch water line that we
17 are discussing I think has been replaced with a one-inch
18 water line as per Mr. Crowder's testimony.

19 JUDGE STEARLEY: I believe we are
20 discussing the service connection lines, which are not --

21 MS. ORLER: That is the two-inch water line
22 that is established here.

23 MR. COMLEY: I don't think there's any
24 testimony on that at all. That is an unknown and
25 unsubstantiated fact.

1 JUDGE STEARLEY: I would agree, Mr. Comley.
2 I do not see where this comes into play with what we have
3 on the record at this point and what the purpose of this
4 hearing was. It's assuming facts that are not in
5 evidence.

6 MS. ORLER: Can I submit evidence that
7 shows this?

8 JUDGE STEARLEY: At this point you're doing
9 cross-examination of Mr. Crowder. If you have additional
10 evidence you would like to offer at the time of presenting
11 your rebuttal and surrebuttal testimony, we can take that
12 up at that time, and it will be subject to any appropriate
13 objections that will be made at that time.

14 MS. ORLER: Can we address page 9,
15 number D, service connections in this document, since that
16 has been used as a part of Mr. Crowder' testimony?

17 JUDGE STEARLEY: If those are established,
18 in fact, to be the same service connections that we're
19 talking about, if Mr. Crowder can establish that, and if
20 this document can be authenticated, you can proceed with
21 questioning about that.

22 BY MS. ORLER:

23 Q. Mr. Crowder, have you had a chance to look
24 at this document?

25 MR. COMLEY: We're not clear on which

1 document is being referred to. Has this been marked?

2 JUDGE STEARLEY: This has been marked as
3 Exhibit 110. It's titled Engineering Report for Water
4 Line Improvements. Does everyone have a copy of that
5 document?

6 MS. HEINTZ: I have pages 3, 8 and 9. I do
7 not have the complete document.

8 JUDGE STEARLEY: I also have pages 3, 8 and
9 9.

10 MS. ORLER: I did not provide the entire
11 document because I'm not utilizing the entire document.
12 However, I have the entire document as an authenticated
13 document, and if everyone wants the entire document, at a
14 break I'll be more than happy to make copies of the entire
15 document.

16 JUDGE STEARLEY: That's fine.
17 Authentication of that document, you can try to
18 authenticate it with Mr. Crowder, but that is yet to be
19 done as well. So if you want to proceed, we'll see where
20 your line of questioning goes with this.

21 BY MS. ORLER:

22 Q. Have your conversations with Mr. Krehbiel,
23 the engineer, have you had discussions with regards to
24 this report for the replacement of the water lines
25 submitted by Mr. Krehbiel?

1 A. No.

2 Q. So what plans and specifications were you
3 referring to earlier?

4 MS. HEINTZ: Your Honor, I believe this
5 question has been asked and answered several times.

6 MS. ORLER: I believe his earlier testimony
7 was the plans and specifications of the engineer. So if
8 this is not what he was referring to, isn't it pertinent
9 to know what he was referring to?

10 JUDGE STEARLEY: You may answer that
11 question, Mr. Crowder.

12 THE WITNESS: Repeat the question, please.
13 BY MS. ORLER:

14 Q. What plans and specifications from the
15 engineer were you referring to earlier that enabled you to
16 do your job?

17 A. The approved plans from Krehbiel
18 Engineering.

19 Q. Now, you also mentioned documents from DNR.
20 What documents from DNR allowed you to do your job, such
21 as the daily inspecting?

22 A. The plans were approved by DNR.

23 Q. Did you ever deal with any DNR documents or
24 requirements for the water line replacement?

25 A. No, I didn't.

1 Q. How did you know, then, on a daily basis
2 when you did your inspecting if you were meeting the
3 standards and criteria set forth by DNR?

4 A. Because we did it according to the plans
5 issued by Dave Krehbiel, which were approved by DNR, which
6 every day Dave Krehbiel came out and did the inspections
7 on the lines.

8 Q. If I showed you this document in its
9 entirety, would that refresh your memory?

10 A. No.

11 Q. Can you tell us for the lines that we are
12 specifically discussing today, which are the --

13 MS. ORLER: May I use the easel?

14 JUDGE STEARLEY: Yes, you may.

15 MS. ORLER: Can everyone see this?

16 JUDGE STEARLEY: Everyone except us on the
17 Bench.

18 MS. ORLER: Can you see now?

19 JUDGE STEARLEY: Yes.

20 MS. ORLER: Can everyone else still see?

21 BY MS. ORLER:

22 Q. Okay. What I'd like to try to do for
23 everyone is clarify the number of different terms that
24 have been used for the lines that we are all trying to use
25 as a common terminology, if I could, Mr. Crowder. This is

1 supposed to be representative of Big Island.

2 A. Okay.

3 Q. Is that okay with you?

4 A. I'll take your word for that.

5 Q. All right. Thanks. Now, Big Island is

6 surrounded by water, is it not?

7 A. The last time I seen it.

8 Q. Okay. I've made some nipples in the

9 water -- ripples in the water, excuse me, to designate the

10 lake. Would you agree that there is a road that

11 encompasses or makes a loop around the island?

12 A. Yes.

13 Q. Is that okay for a road?

14 JUDGE STEARLEY: Please answer yes or no.

15 THE WITNESS: Yes.

16 JUDGE STEARLEY: Thank you. Our reporter

17 can't pick nodding.

18 THE WITNESS: I got caught up in the

19 moment. I'm sorry.

20 BY MS. ORLER:

21 Q. On the nipples or the road? Okay. Now,

22 when the main lines were installed, they were installed on

23 the interior of the island here on the inside of the road;

24 is that correct? If this is the road, the main lines

25 would have been installed in here (indicating)?

1 A. This last time?

2 Q. Were the mains moved from the first
3 installation?

4 A. We moved the water main, yes.

5 Q. Okay. So you moved it from where? Where
6 was it the first time?

7 A. That side of the lake wasn't moved.

8 Q. This side was (indicating)?

9 A. Yes.

10 Q. So we had original Phase 1 here, is that
11 correct, original installation? This is where it was?

12 A. My understanding, yes.

13 Q. And where was it moved to?

14 A. The water main was moved ten feet.

15 Q. So either way here it was moved ten feet;
16 is that correct?

17 A. Yes.

18 Q. All right. Is everyone with us so far?
19 Now, the lines that went from this main that was moved
20 under the road -- we'll use my house as an example. I
21 live up here somewhere; is that correct? Okay. This is
22 my home. This is the original Phase 1, and you moved this
23 line in one direction or the other ten feet to separate it
24 from the sewer; is that correct?

25 A. Ten feet towards the street, yes.

1 Q. Okay. Now, when you relocated this line,
2 there were lines coming from this line to a service
3 connection; is that correct?

4 A. You didn't have one.

5 Q. I didn't have a service connection?

6 A. No. We brought the service connection over
7 to your house.

8 Q. Okay. So if I paid \$4,800 and \$2,000, what
9 did I get for that payment?

10 MR. COMLEY: Objection. The issue about
11 the amount of tap-on fees and what Ms. Orler may have paid
12 for it in connection with service is beyond Mr. Crowder's
13 testimony about the flexible blue piping.

14 JUDGE STEARLEY: I will sustain. And,
15 Ms. Orler, I've given you some latitude with setting up
16 your questioning here, but please let's focus on the
17 service connection lines.

18 BY MS. ORLER:

19 Q. These lines that come from the main line
20 that you relocated underneath the street to a service
21 connection, what are some of the various terms that have
22 been used for these lines?

23 A. Well, I would call it a main extension line
24 or a service line to the house, to the -- not to the
25 house, to the property line, but it's really a main line

1 extension is what it really is.

2 Q. Okay.

3 A. We didn't do anything with service lines to
4 the houses.

5 Q. To the houses or to the property?

6 A. To the houses.

7 Q. To the houses?

8 A. To the property line was as far as the
9 scope of our work went.

10 Q. And was that a part of this water line
11 replacement?

12 A. Yes.

13 Q. It was a part of the water line
14 replacement. Thank you.

15 So this line going from the main underneath
16 the street was a part of the water line replacement?

17 A. Yes.

18 Q. Okay.

19 A. But we didn't use any blue pipe on that end
20 of the lake.

21 Q. All right. And why not?

22 A. We used what was on the plans at that time.
23 The only time we used the blue pipe was when we got into a
24 certain situation on the other end of the lake.

25 Q. Okay. What type of material was called for

1 here (indicating)?

2 A. I don't have the plans in front of me. I
3 believe it was Schedule 40 PVC.

4 Q. And what type of material was called for
5 where you used the blue pipe?

6 A. That was a change order with Krehbiel
7 Engineering.

8 Q. From what to what?

9 A. From the Schedule 40 to this blue pipe.

10 Q. And then that was approved by Mr. Krehbiel?

11 A. Yes.

12 Q. Okay. For the installation of this pipe,
13 was there -- how did Mr. Carroll know how to properly
14 install this pipe and how did you know how to inspect it
15 to be certain it was properly installed?

16 A. Well, he's a licensed contractor that has
17 done this many times before. I have worked with this for
18 many years. Plus we had Krehbiel Engineering inspecting.
19 So I think between the three of us, that we figured out
20 how to do it correctly.

21 Q. Did Mr. Krehbiel ever make any requirements
22 that a representative from the manufacturer of the pipe --

23 A. You'd have to ask Mr. Krehbiel that, but we
24 had the specifications on the pipe from the supplier.

25 Q. How did you know what I was going to ask

1 what you said I'd have to ask Mr. Krehbiel that? I didn't
2 finish my question.

3 A. Okay. Finish your question, please.

4 Q. Did Mr. Krehbiel ever make any
5 specifications to you, since you were the direct
6 supervisor for Mr. Carroll, with regards to any specific
7 installation techniques or specifications for the
8 installation of this pipe?

9 A. Not to my knowledge.

10 Q. Would he have done that directly with
11 Mr. Carroll?

12 A. No. We installed it according to the
13 specifications of the supplier.

14 Q. Okay. All right. Using the specifications
15 of the supplier, were there any certain specifications
16 with regards to placing this line under a roadway?

17 A. I don't understand your question.

18 Q. If you used the specifications for
19 installation from the supplier, were there any special
20 specifications with the use of this pipe under a roadway
21 or a thoroughfare?

22 A. No.

23 Q. There weren't?

24 A. The specifications were from the plans from
25 Krehbiel's office.

1 Q. Okay. But when I just asked you about
2 installation, you said that you used the installation
3 specifications from the manufacturer.

4 A. That's who we got the specifications from
5 on the installation, not laying of the pipe or where it
6 goes or location. That was with Dave Krehbiel's office.

7 Q. Okay. So with regards to the installation,
8 what specifics did the manufacturer provide with regards
9 to the placement of this pipe under a thoroughfare or
10 roadway?

11 A. I don't have that information.

12 Q. But you don't know, since you were the
13 project manager in charge and supervising on a daily
14 basis?

15 A. I didn't say I didn't know at that time. I
16 don't have that in front of me. I'm not going to sit here
17 and tell you things that might not be absolutely true,
18 but --

19 Q. Okay. With regards to bedding material,
20 did this manufacturer make any specifications with regards
21 to installation of this pipe and bedding material?

22 A. No, they didn't.

23 Q. They did not?

24 A. No.

25 Q. None?

1 to this section.

2 JUDGE STEARLEY: Okay. We will mark this
3 as Exhibit 111. Please give the court reporter a copy.

4 (EXHIBIT NO. 111 WAS MARKED FOR
5 IDENTIFICATION BY THE REPORTER.)

6 BY MS. ORLER:

7 Q. I'll give you a few moments to look that
8 over, Mr. Crowder. Let me know when you feel comfortable
9 with that.

10 A. Okay.

11 Q. Are you familiar with a gentleman by the
12 name of Gene Warner, who is the technical environmental
13 safety and health person for Centennial Plastics?

14 JUDGE STEARLEY: Ms. Orler -- okay. Go
15 ahead and proceed.

16 THE WITNESS: No.

17 BY MS. ORLER:

18 Q. Are you -- you have stated that you are not
19 familiar with the installation practices, then, from the
20 manufacturer; is that correct?

21 A. I have not seen this, but --

22 Q. These are the installation specifications
23 from the manufacturer, Centennial Plastics, for the blue
24 pipe that you are using.

25 MR. COMLEY: Objection. That is again

1 testimony about this document that has not been identified
2 by any witness, and this witness knows nothing about it.

3 JUDGE STEARLEY: That will be sustained.

4 BY MS. ORLER:

5 Q. Are you aware that as per the installation
6 specifications from the manufacturer, Centennial Plastics,
7 for the blue pipe that you are using, that the maximum
8 particle size for bedding material is one-half inch?

9 MR. COMLEY: Objection. There is no
10 evidence in the record that that is the design
11 specification for installation of this pipe.

12 JUDGE STEARLEY: That does assume facts not
13 in evidence. I will sustain the objection.

14 MS. ORLER: These are the specifications
15 from the manufacturer, Centennial Plastics.

16 JUDGE STEARLEY: That has not been
17 authenticated. No foundation has been laid. It's not
18 admitted into evidence. So when you state that, you are
19 actually testifying, which is inappropriate for you as
20 doing cross-examination of Mr. Crowder.

21 BY MS. ORLER:

22 Q. What bedding size -- excuse me. In your
23 surrebuttal testimony, Mr. Crowder, what was the bedding
24 size of the bedding material that you said you used on the
25 inclines?

1 A. We used a base rock, three-quarter-inch
2 base rock.

3 Q. Three-quarter-inch base rock?

4 A. With fines. Also, it's a -- it's the same
5 material as the original. It's just maximum of
6 three-quarters so you can get compaction on the up-slopes.
7 You can't get a compaction on an up-slope with a powder or
8 a sand or whatever. It won't hold.

9 Q. Was that particle size approved by
10 Centennial Plastics as the proper size bedding material to
11 be used for the installation of this pipe?

12 A. It was approved by Krehbiel Engineering.

13 Q. But not by the manufacturer?

14 A. Not to my knowledge.

15 Q. Okay.

16 A. But this is a national standard of how you
17 on a slope, what you use to do your compaction.

18 Q. What is the 50-year warranty of the pipe
19 based on, Mr. Crowder?

20 MS. HEINTZ: I object to that question
21 because I don't think Mr. Crowder was involved in deciding
22 whether or not that pipe had a 50-year warranty.

23 MS. ORLER: It's in his testimony.

24 MS. HEINTZ: I don't know that he's
25 competent to testify as to why or what goes into that

1 warranty.

2 JUDGE STEARLEY: I believe the manufacturer
3 of the piping would have to answer that question. I will
4 sustain the objection.

5 MS. ORLER: Mr. Crowder included in his
6 testimony that the piping was warranted for 50 years.

7 MS. HEINTZ: I'm not objecting to
8 Mr. Crowder testifying that there is a 50-year warranty.
9 I'm objecting to questions about why or how that warranty
10 came into being.

11 JUDGE STEARLEY: Yes, and that's why I
12 sustained the objection. Mr. Crowder would have no
13 knowledge of why the corporation would warranty a
14 particular product for a particular length of time.

15 BY MS. ORLER:

16 Q. You've stated in your testimony on page 2,
17 lines 5 through 9, that you were also responsible for
18 approving and purchasing the materials that the contractor
19 used?

20 A. Yes.

21 Q. Did the purchasing and approval of these
22 materials have to go through Mr. Krehbiel, the engineer?

23 A. Yes.

24 Q. They did?

25 A. Yes.

1 Q. So it was upon his approval that you were
2 granted the authority to purchase and approve materials?

3 A. Right.

4 Q. Can you tell me if the Syncore HDPD blue
5 pipe that you brought with you today is the same pipe that
6 Mr. Krehbiel submitted as a part of his plans and
7 specifications?

8 A. I can't answer for Mr. Krehbiel.

9 Q. According to the plans and specifications
10 that you worked from provided to you by Mr. Krehbiel, can
11 you tell us if the same --

12 A. The original plans, no.

13 Q. So what plans --

14 A. There were changes made for this one
15 particular instance.

16 Q. So what plans and specifications provided
17 to you by Mr. Krehbiel did you use for your installation
18 and your job?

19 A. Repeat the question, please.

20 Q. What plans and specifications did
21 Mr. Krehbiel provide to you to enable you to do your job
22 as the water line replacement?

23 MS. HOLSTEAD: Objection, your Honor. The
24 question is rather vague, and if she's referring to the
25 change orders, then that question has been asked and

1 answered.

2 JUDGE STEARLEY: I will sustain the
3 objection. If you can clarify with more specificity, you
4 may rephrase and ask again.

5 BY MS. ORLER:

6 Q. What changes from the plans and
7 specifications that Mr. Krehbiel provided to you did you
8 make in this replacement line project?

9 A. The blue pipe on the causeway.

10 Q. That was the only change?

11 A. Yes.

12 Q. And it was the type of pipe that was the
13 only change?

14 A. Right.

15 Q. How about the diameter of the pipe?

16 A. Stayed the same.

17 Q. Stayed the same?

18 A. Right.

19 Q. So if you were to replace the existing
20 pipe, were you to replace the existing pipe with the same
21 diameter pipe?

22 A. We did. The pipe was to be replaced
23 according to the plans and specifications approved by DNR,
24 and that's what we did.

25 Q. Okay. Plans and specifications approved by

1 DNR, which were what?

2 A. I went through this I don't know how many
3 times.

4 MR. COMLEY: Your Honor, this has been
5 covered more than once in the testimony of Mr. Crowder,
6 and I think the line of questioning should stop. I object
7 to this question.

8 JUDGE STEARLEY: The question has been
9 asked and answered. I will sustain.

10 BY MS. ORLER:

11 Q. You have indicated in your surrebuttal
12 testimony that you used a three-quarter-inch rock as
13 bedding material; is this correct, Mr. Crowder?

14 A. A three-quarter-inch base rock, not
15 three-quarter-inch rock.

16 Q. Base rock?

17 A. Right.

18 Q. Was this according to the plans and
19 specifications that you referred to earlier that were
20 approved by DNR?

21 A. I can't answer that. We had discussed this
22 with Dave Krehbiel at the time, and like I said, it's the
23 only thing that you could use to -- use on this slope that
24 you could get compaction.

25 MS. ORLER: Your Honor, if I may, this is

1 the group of authenticated documents I showed you earlier.

2 MR. COMLEY: Your Honor, I understand that
3 there are occasions when there needs to be sidebar, but I
4 think in the introduction of these records or descriptions
5 of the records that Ms. Orler has in her hands, I would
6 appreciate it if she would speak up so that we can hear.

7 JUDGE STEARLEY: You can stand at the
8 podium and identify what it is you're going to be offering
9 before you approach the Bench.

10 MS. ORLER: Okay. This is a group of
11 approximately 103 pages that were authenticated documents
12 that Mr. Pugh and I received from DNR. I'm not using all
13 of them today, only the ones with the appropriate Post-It
14 notes for my presentation. One of those documents is a
15 report of construction and inspection of the public water
16 supply improvements water line replacement done on
17 March the 8th of 2005 by DNR, Mr. Clinton Finn. As a part
18 of the unsatisfactory features on the first page Mr. Finn
19 indicates that --

20 JUDGE STEARLEY: Ms. Orler, please just
21 identify the documents. Reading from them is providing
22 testimony.

23 MR. COMLEY: Your Honor, I'm not too sure
24 whether that's already been in evidence, and we have not
25 seen any authenticated documents from DNR except those

1 that were identified by the earlier DNR witness.

2 JUDGE STEARLEY: Mr. Orler, if you will
3 please distribute the documents you're planning on using.
4 This may very well be one that's already in evidence, from
5 my recollection.

6 And, Ms. Orler, if you have documents that
7 you've obtained that you think are authenticated, that
8 would be a matter for when you're providing testimony to
9 try to lay foundation, authenticate the document and
10 introduce it into evidence. This particular witness
11 cannot authenticate documents from the DNR as a basis of
12 foundation or authentication for their admission.

13 Mr. Crowder, look at the documents, and you
14 can ask questions which will be subject to relevant
15 objections.

16 BY MS. ORLER:

17 Q. Mr. Crowder, you've stated previously in
18 your testimony that for the water line replacement project
19 you're employed by Folsom Ridge but you take your
20 instruction directly from Mr. Reggie Golden; is that
21 correct?

22 MR. COMLEY: This has been asked and
23 answered.

24 JUDGE STEARLEY: I'll sustain.

25 BY MS. ORLER:

1 Q. If you take your instruction from
2 Mr. Golden, did he share this document with you regarding
3 the unsatisfactory feature?

4 MR. COMLEY: Objection.

5 JUDGE STEARLEY: And grounds, Mr. Comley?

6 MR. COMLEY: I think I will object to the
7 manner in which she is addressing the witness about his
8 knowledge and Mr. Golden visiting with him about this. If
9 he has understanding of the document, then that is one
10 thing, but conversations between him and Mr. Golden I
11 object to.

12 MS. ORLER: He takes his instruct directly
13 from Mr. Golden. That's whom he's employed by.

14 MR. COMLEY: My same objection.

15 JUDGE STEARLEY: The objection will be
16 sustained. You need to focus your questions to specific
17 matters on this document or something that's relating
18 here. You know, if you want to ask Mr. Crowder if he
19 recalls conversations, specific portions of those, you
20 may, but you have to be more specific in what you're
21 questioning him about.

22 BY MS. ORLER:

23 Q. Was it ever brought to your attention by
24 any individual that bedding material being used on service
25 lines was not what was shown on the approved and revised

1 plans?

2 A. Not to my knowledge, no.

3 Q. You were not made aware of this fact either
4 by DNR, Mr. Krehbiel or Mr. Golden?

5 A. Not that I can recollect, no.

6 Q. Was it ever brought to your attention that
7 Item 4, that there are locations where the --

8 MR. COMLEY: Objection.

9 MS. HEINTZ: Objection. I object to this
10 line of questioning and this use of the document. I think
11 Ms. Orler's using it to provide testimony.

12 MS. ORLER: Okay. I can rephrase that.

13 JUDGE STEARLEY: At this point you haven't
14 had Mr. Crowder -- you haven't asked him any questions to
15 identify the document either and his familiarity with the
16 document.

17 BY MS. ORLER:

18 Q. Are you familiar with this document?

19 A. I do not recall this document, no.

20 Q. If you take instruction directly from
21 Mr. Golden, is it Mr. Golden's responsibility then to make
22 you aware of incorrect installation procedures not
23 following revised plans during the course of your water
24 line replacement?

25 MR. COMLEY: I'll object on that. I think

1 we've gone through his duties and what he's done on the
2 project, and whether his relationship with Mr. Golden goes
3 that far is really irrelevant to what we're trying to do
4 in this particular part of the ancillary proceeding. I
5 object to the question.

6 JUDGE STEARLEY: The objection will be
7 sustained.

8 BY MS. ORLER:

9 Q. What type of instruction does Mr. Golden
10 provide you with regards to water line replacement for
11 this project for which you were hired?

12 A. He hired me to do the job. He didn't tell
13 me how to do the job or get involved in any of the daily
14 routine. He hired me to do the job, complete the job,
15 which we did.

16 Q. So Mr. Golden hired you, and then did you
17 never have any more conversations with Mr. Golden
18 throughout the course of this project regarding the proper
19 reinstallation of the water line?

20 A. We had conversations about it, yes.

21 Q. And what were those conversations about?

22 A. You're talking about two years of
23 conversations.

24 Q. Share it.

25 MR. COMLEY: We don't have two years.

1 MS. HEINTZ: That is argumentative, and I
2 don't think we have two years --

3 THE WITNESS: I don't have two years to sit
4 here and talk about it.

5 JUDGE STEARLEY: Your questions have to be
6 more specific than that, Ms. Orler.

7 BY MS. ORLER:

8 Q. Did you ever have conversations with
9 Mr. Golden regarding the proper or improper reinstallation
10 of the water line replacement?

11 A. He would ask me how things were going, and
12 we would talk about it.

13 Q. Did you ever have any review on
14 Mr. Golden's behalf on your capabilities?

15 A. On this project?

16 Q. Yes.

17 A. No, I don't think. I mean, not as a
18 review. I don't know what you're getting after.

19 Q. How did you know if you were doing your job
20 properly on this project?

21 A. Well, I've been doing this type of work for
22 about 40 years, so --

23 Q. So that's the only criteria for which you,
24 Mr. Crowder, know that you were fulfilling the scope of
25 this replacement project --

1 A. No.

2 Q. -- is because you've done it for 40 years?

3 A. No.

4 Q. Okay.

5 A. That's part of it. The other part is that

6 everything we did was inspected, like I've said before, by

7 Krehbiel Engineering.

8 Q. Was it also inspected by DNR?

9 A. Yes. And was approved by both.

10 Q. And were the results of the inspections by

11 DNR shared with you?

12 A. Of course.

13 Q. By whom?

14 A. I usually got copies of inspections by DNR.

15 Q. All right. The document I've handed you is

16 a report of construction inspection from DNR.

17 A. Right.

18 Q. Did you receive a copy of this?

19 A. I don't recollect ever seeing this, no.

20 Q. Okay. It was addressed to Mr. Golden.

21 Would there have been a reason why Mr. Golden did not

22 share this with you?

23 MS. HEINTZ: Objection, calls for

24 speculation.

25 MR. COMLEY: We're also going back into

1 subject matter that is far afield of what we're talking
2 about here.

3 JUDGE STEARLEY: Sustained.

4 MS. ORLER: It's talking specifically about
5 the service lines that we are discussing.

6 MR. COMLEY: The flexible blue piping is
7 the --

8 JUDGE STEARLEY: The question that you
9 asked did not address that.

10 BY MS. ORLER:

11 Q. Did you ever have conversations with
12 Mr. Golden with regards to reports from DNR where there
13 was unsatisfactory bedding material being used on the very
14 lines that we are talking about as well as the very lines
15 we're talking about not being separated by ten feet?

16 MS. HEINTZ: Your Honor, again, I think
17 that Ms. Orler is using this document to provide
18 testimony, and I object to the question.

19 JUDGE STEARLEY: Ms. Orler can ask the
20 question in terms of has Mr. Crowder had any
21 conversations, but she should not mischaracterize the
22 document as far as its contents. So you need to limit
23 your question to Mr. Crowder as far as whether or not he's
24 had conversations regarding bedding materials. Other than
25 that, you're characterizing, you're adding a

1 characterization to the document as far as improper
2 materials or improper installation, which has not been
3 established.

4 BY MS. ORLER:

5 Q. Did you ever have conversations with
6 Mr. Golden regarding the bedding material used on this
7 project?

8 A. No.

9 Q. Did you ever have conversations with
10 Mr. Golden regarding the fact that part of your project
11 was not separated by a minimum distance of ten feet?

12 MR. COMLEY: There is no fact established
13 about the separation of ten feet, no fact established in
14 this case about that. That is assuming facts not of
15 record, and it's an improper question to the witness and I
16 object.

17 JUDGE STEARLEY: It's assuming facts not in
18 evidence. The objection will be sustained.

19 MS. ORLER: That's all I have.

20 JUDGE STEARLEY: All right. Thank you,
21 Ms. Orler. Cross-examination from Mr. Pugh. Do you have
22 any questions for Mr. Crowder?

23 CROSS-EXAMINATION BY MR. PUGH:

24 Q. Mr. Crowder, you've been there a long time
25 this morning, so I'm not going to take but about a minute,

1 I hope.

2 A. Me too.

3 Q. I know, it's no fun. I'm going to try to
4 keep my questions pretty well located around the blue flex
5 line.

6 A. Thank you.

7 Q. Was there a -- during your installation of
8 the -- on the causeway of the blue flex line extensions,
9 was there one of the homeowners that did not want the blue
10 installation and wanted the normal one-inch pipe?

11 A. Not to my knowledge.

12 Q. Okay. Is there one homeowner on the
13 causeway that does have uprights with a shutoff valve in
14 it?

15 A. I believe there is one, yes.

16 Q. Is that the only shutoff valve on the
17 causeway that you are familiar with?

18 A. I believe you're right.

19 Q. During your --

20 A. That's on the water line you're talking
21 about?

22 Q. Yes, sir.

23 A. Yes.

24 Q. During your installation, your trench --
25 building your trenches to run this blue flex line, did you

1 dig deep enough to see the sewer line on the upper road?

2 A. We never found the sewer line, never seen
3 it, no.

4 Q. Okay. Are you saying that also that you
5 did not see any of the service lines going to the sewer
6 main?

7 A. Not at these connections, no.

8 Q. Yeah. I have -- this is a -- I have a
9 picture here. I believe it was Exhibit 63. Everybody in
10 the court here is familiar with it probably but you.

11 MR. PUGH: I'd like permission to show him
12 this one.

13 JUDGE STEARLEY: You may approach.

14 MR. PUGH: I think this is the same thing,
15 isn't it?

16 JUDGE STEARLEY: Yes. That's page 2 of
17 Exhibit 63.

18 BY MR. PUGH:

19 Q. I'm referring to these two going to the
20 house. This picture along with many that I presented to
21 the Court to be put in as exhibits is -- this picture that
22 you have is a picture of a sewer and water line, service
23 line together; is that correct?

24 A. Well, I can't tell from the picture. I see
25 two lines here.

1 Q. During your -- during your excavation, did
2 you see anything similar to that where sewer and water
3 lines were run together?

4 A. The service lines?

5 Q. Yes, sir.

6 MR. COMLEY: Your Honor, we may be on the
7 wrong exhibit. I only see -- on the second page, I'm only
8 seeing one line depicted at the top of the page.

9 JUDGE STEARLEY: I am also. I thought we
10 were looking at page 2. Are we looking at a different
11 page?

12 MR. McELYEA: Page 1.

13 JUDGE STEARLEY: Page 1?

14 MR. PUGH: Yes.

15 MR. COMLEY: I don't think the witness has
16 page 1.

17 JUDGE STEARLEY: I don't believe so either.

18 THE WITNESS: The date on this is 6/1/2000.

19 BY MR. PUGH:

20 Q. Yes, sir.

21 A. I wasn't around in 2000.

22 Q. At least on Big Island.

23 A. On Big Island, let's put it that way.

24 JUDGE STEARLEY: Do we have the appropriate
25 exhibit in front of Mr. Crowder?

1 THE WITNESS: (Indicating).

2 JUDGE STEARLEY: Okay. Mr. Pugh, you may
3 proceed.

4 BY MR. PUGH:

5 Q. You're stating that you were not
6 responsible for this installation here; is that correct?

7 A. That's true.

8 Q. Yes. I agree. During your procedure of
9 reinstalling the water line, did you -- on the causeway,
10 did you correct this sewer and water line being in the
11 same trench?

12 MS. HEINTZ: Your Honor, I'm going to
13 object here because I think Mr. Crowder testified earlier
14 that he could not tell if the lines were water and sewer
15 lines.

16 JUDGE STEARLEY: And I'm not sure from the
17 question if we're asking about connection lines or mains
18 or -- if you could reclarify and rephrase, Mr. Pugh.

19 BY MR. PUGH:

20 Q. Would you take my word that I took these
21 pictures during the installation of these two lines?

22 MR. COMLEY: Your Honor, I think that's an
23 unfair question to the witness and I observe to it. These
24 have already been submitted, and whether they've been
25 admitted or not, I'm not too sure, but I don't think the

1 witness needs to be confronted with that kind of a
2 question.

3 JUDGE STEARLEY: That's a question
4 Mr. Crowder would not really be able to answer based upon
5 his limit appearance here. Mr. Pugh, if you could just
6 focus the questions to the picture that you have before
7 the witness.

8 BY MR. PUGH:

9 Q. This -- are you aware that this picture I'm
10 showing you is one of the service lines that you connected
11 your blue flex tubing to extend it to the lower road?

12 A. No, I can't. You know, I mean, I don't
13 know where these pictures are or -- you say they were on
14 the causeway in June of 2000, and like I say, that was
15 quite a while before me, but --

16 Q. Yeah. I understand that. Let me move on.
17 I'm obviously not doing any good there.

18 You stated -- you stated in your earlier
19 testimony to Ms. Orlor that Kenny Carroll was hired
20 because of his prior good work for Mr. Golden, as one of
21 the reasons?

22 A. As one of the reasons, yes.

23 Q. Is this -- is this picture an example of
24 his good work?

25 A. Which picture?

1 Q. The picture you're looking at where the
2 water and sewer line --

3 MS. HOLSTEAD: Objection, your Honor. The
4 witness has already testified that he can't identify that
5 picture. He certainly can't identify who put the work in.

6 JUDGE STEARLEY: I will sustain.

7 BY MR. PUGH:

8 Q. During your -- during your reinstallation
9 of the water mains and service lines, do you recall ever
10 separating these two -- these two lines?

11 A. No, because I don't know which two lines
12 these are.

13 MR. PUGH: I think that's it.

14 JUDGE STEARLEY: Thank you, Mr. Pugh.

15 Questions from the Bench, Commissioner Appling?

16 QUESTIONS BY COMMISSIONER APPLING:

17 Q. Mr. Crowder, good morning.

18 A. Good morning.

19 Q. I think I've got just two or three
20 questions just for my own clarification. I read your
21 testimony, and then I've heard a lot here this morning,
22 but if you could just keep it brief, what was you hired to
23 do?

24 A. I was hired to separate the water line from
25 the sewer line that was installed incorrectly according to

1 the plans and specifications from Dave Krehbiel that were
2 approved by DNR.

3 Q. Did you follow the plans that was given to
4 you?

5 A. Yes, I did.

6 Q. Has that project been completed?

7 A. It's been completed and inspected and
8 approved by DNR.

9 Q. And to the best of your knowledge, is there
10 any place in that line a deviation from that line that you
11 know of?

12 A. Not from the main and the service extension
13 lines that we installed, I'll say that they're all done
14 correctly and according to the plans.

15 Q. I think I know what the clarification is.
16 Is the blue line used because of its flexibility?

17 A. Yes, sir.

18 Q. And going around rocks and all that kind of
19 stuff?

20 A. This picture (indicating).

21 Q. I have that picture in front of me.

22 A. It saves having to put an elbow here
23 (indicating).

24 Q. Joints and all that stuff.

25 A. And we can run it into one pipe. You have

1 less leaks. You have less --

2 Q. I understand.

3 A. That's why we did it.

4 Q. Yeah. I managed all the State-owned
5 buildings. I got more line laying than I would ever like
6 to think of anymore.

7 I think everybody's concerned about the
8 distance between the sewer line and the water lines.

9 A. Right.

10 Q. To the best of your knowledge, they was
11 laid according to the plan and they should be ten foot?

12 A. They were laid according to the plans, and
13 then we had Dave Krehbiel's office, Krehbiel Engineering,
14 inspect it daily, and they made daily as-builts of where
15 the lines were.

16 Q. Okay. I don't know how fair this question
17 is, but if I went down there with a tape measure, I
18 probably would find ten feet apart in those two lines?

19 A. I'd be glad to walk it with you.

20 COMMISSIONER APPLING: Thank you very much.

21 QUESTIONS BY JUDGE STEARLEY:

22 Q. Mr. Crowder, I have one question for you.
23 If there were any variations in the plans for the
24 installation, those would have been taken to account with
25 DNR's approval; is that correct?

1 A. That's correct. Everything went through
2 Dave Krehbiel, and he was -- I wasn't on a daily basis
3 with DNR. That was Dave Krehbiel's position, and -- but
4 any changes that would have or had been made were done
5 with the approval of DNR.

6 JUDGE STEARLEY: All right. Thank you,
7 Mr. Crowder. Recross-examination based on questions from
8 the Bench, beginning with the Chapter 393 companies.

9 MS. HOLSTEAD: No questions, your Honor.

10 JUDGE STEARLEY: Staff?

11 MS. HEINTZ: No questions, your Honor.

12 JUDGE STEARLEY: Office of Public Counsel?

13 MS. BAKER: I do have some questions.

14 RE CROSS-EXAMINATION BY MS. BAKER:

15 Q. All right. We've been talking today mainly
16 about the blue flex line, but from your answers that were
17 given, is it true that as far as the main line replacement
18 that was being done, there are more -- what was the word
19 did you use -- the main line extensions or the feeder
20 mains, there are more materials that were used by you
21 besides just the blue flex pipe; isn't that correct?

22 A. It's the pipe that was on the main approved
23 plans, yes.

24 Q. Okay. So if I refer to Ms. Orler's -- up
25 here, they had the --

1 MS. HEINTZ: Your Honor, I would object to
2 this line of questioning. These questions are meant to be
3 based on questions from the Bench, not earlier
4 cross-examination.

5 MS. BAKER: I'm just trying to get some
6 clarification, because we've been talking about which
7 lines Mr. Crowder has put in, and the questions were based
8 on that.

9 JUDGE STEARLEY: I will allow Ms. Baker a
10 little bit of latitude here to set up her questions at
11 least. When we hear the questions, it will be subject to
12 any appropriate objections.

13 BY MS. BAKER:

14 Q. So the original plans were based on the
15 Schedule 40 plastic normal PVC type of pipe; isn't that
16 correct?

17 A. Yes, ma'am.

18 Q. And so then whenever you hit into an area
19 where a change needed to be made because of the distance,
20 the elevation, the blue pipe was used instead; is that
21 correct?

22 A. That was just one location, the causeway.

23 Q. How many locations of the blue pipe were
24 necessary?

25 A. It was just on the causeway, and as I said

1 earlier, eight, maybe or -- I don't know the exact number,
2 but it was just on that upper road on the causeway.

3 Q. Okay. So there were, let's say,
4 approximately eight locations where it deviated from the
5 plastic PVC --

6 A. Right. Right.

7 Q. -- pipe?

8 All right. There were questions from the
9 Bench regarding the ten-foot separation. The ten-foot
10 separation requirement for your work you believe was based
11 on the four-inch mains being ten-foot, having a ten-foot
12 separation?

13 A. Yes, ma'am.

14 Q. The blue plastic main extension did not
15 have a ten-foot separation; is that correct?

16 A. I think you lost me.

17 Q. The blue -- or the main extensions, the
18 feeder lines, those as far as you are -- as far as your
19 understanding of the scope of the project was, that was
20 not required to have a ten-foot separation; is that
21 correct?

22 A. We had the ten-foot separation on the blue
23 pipe itself.

24 Q. Okay.

25 A. But where they connected to the house

1 service line, there is a main in that road somewhere, we
2 don't know where, but it's approximately four to five feet
3 below that, and it is in there. So there's possibility
4 there that it's under ten feet, but that is past our scope
5 of work. That's underneath the service lines themselves.

6 Q. And that's because your scope of work was
7 based on the four-inch mains?

8 A. Four-inch main and the distribution line to
9 their service line.

10 Q. Okay. But that just -- just to clarify
11 what you just said, you do believe that there is a sewer
12 line below those distribution mains?

13 A. In that one area, I believe there is, yes,
14 but that was something we didn't do.

15 MS. BAKER: That's all the questions I
16 have.

17 JUDGE STEARLEY: Thank you, Ms. Baker.
18 Recross based on questions from the Bench from
19 Complainants, Ms. Orler?

20 MS. ORLER: I have only two.

21 RECROSS-EXAMINATION BY MS. ORLER:

22 Q. Now, Mr. Crowder, I believe that you just
23 answered Ms. Baker by stating that a part of the water
24 line replacement was the four-inch main looping the island
25 as well as the separation of the distribution trunk lines

1 coming from the main to the service connection; is that
2 correct?

3 A. Across the road, yes.

4 Q. Yes. Now, Judge Stearley said or had asked
5 you if there was a variance to any of that, you would have
6 been -- if there was a deviation from any of that, you
7 would have been granted a variance from DNR; is that
8 correct? Was that your answer to Judge Stearley?

9 MR. COMLEY: I think Judge Stearley's
10 question was different from what you said to the witness.

11 JUDGE STEARLEY: It definitely was.

12 THE WITNESS: That's what I thought.

13 BY MS. ORLER:

14 Q. If there was a variance from the specified
15 plans, you would had to have been granted authority to do
16 that by DNR?

17 A. By Dave Krehbiel.

18 Q. By Dave Krehbiel. What would dictate or
19 require a variance being granted by DNR?

20 A. You'd have to ask Dave Krehbiel.

21 Q. Do you know if there was a variance granted
22 by DNR for the less than ten-foot separation of my
23 distribution trunk line based on the fact that I wanted it
24 in my landscaping?

25 MR. COMLEY: Objection.

1 MS. HOLSTEAD: Objection, your Honor. This
2 goes beyond the scope of what the question was that you
3 asked on recross.

4 JUDGE STEARLEY: I will sustain.

5 BY MS. ORLER:

6 Q. I have one more question, then, based on
7 the question that Commissioner Appling asked you with
8 regards to the ten-foot separation. You said that you'd
9 be happy to walk him around the island?

10 A. That was pertaining to the four-inch main
11 that I separated, yes.

12 Q. Would you be equally as happy to walk
13 Commissioner Appling around the island with regards to the
14 main distribution trunk lines that you relocated?

15 A. The ten-foot separation coming across the
16 road, yes.

17 Q. You would be equally as happy?

18 A. Yes. Yes.

19 Q. And how would you explain on that walk to
20 Commissioner Appling for instances that did not meet the
21 ten-foot separation requirement?

22 MS. HOLSTEAD: Objection, your Honor.
23 Assumes facts not in evidence.

24 JUDGE STEARLEY: I will let the question be
25 phrased as a hypothetical.

1 BY MS. ORLER:

2 Q. Hypothetically, if yourself and
3 Commissioner Appling took a walk around our island, how
4 would you explain an instance of a less than ten-foot
5 separation of the main distribution trunk lines coming
6 across the road?

7 JUDGE STEARLEY: Assuming for your
8 hypothetical that that was established.

9 MS. ORLER: Assuming that that had been
10 established, that is correct.

11 THE WITNESS: If that was established, I
12 wouldn't agree to walk with him.

13 MS. ORLER: Thank you.

14 JUDGE STEARLEY: Thank you, Ms. Orler. Any
15 recross-examination from Mr. Pugh?

16 MR. PUGH: No, your Honor.

17 JUDGE STEARLEY: And redirect, Mr. Comley?

18 MR. COMLEY: Thank you very much.

19 REDIRECT EXAMINATION BY MR. COMLEY:

20 Q. Mr. Crowder, Ms. Baker and the Office of
21 Public Counsel asked you a few questions about the
22 approval and purchasing duties you had in connection with
23 this project. Can you tell the Commission why you were
24 involved in approval of purchasing and not the contractor?

25 A. Well, we wanted to make sure that this was

1 done right this time for obvious reasons. That's why when
2 we hired the contractor, we did it on a time and material
3 basis.

4 Q. Did Mr. Carroll respond to a bid?

5 A. He would have bid it, but I requested that
6 it be a time and material, that I didn't want any
7 shortcomings, and that's why I was hired to make sure that
8 the job was done. And so he had no reason to cut corners
9 or shave costs because to him it was time and material he
10 was making money on.

11 Q. Is there any difference in cost between
12 blue flexible piping and the Schedule 40 PVC?

13 A. Yes. The blue pipe is more expensive.

14 Q. And this was selected through you and
15 Mr. Krehbiel?

16 A. Right. This was -- because of the
17 circumstances, we thought a flexible pipe would be
18 better. Just for instance, these \$16.40 just for that
19 nipple, you know, on the connector, where on a PVC you
20 know yourself it's not that expensive. It was just a
21 decision we made in that area that we thought would make a
22 better application for the rise that we had to make next
23 to the road.

24 Q. I know that you have brought with you today
25 a segment of a blue pipe. Let me ask you this. In

1 connection with your testimony today, would that help you
2 better describe some of the characteristics of that pipe
3 to have it shown to the Commissioners and to the Hearing
4 Examiner?

5 A. Well, the reason I brought this particular
6 piece of pipe was to show the type of fitting that we use,
7 and it does have all of the ratings that you were more
8 looking at than the average person, but it has all the
9 classifications and the ratings and shows the thickness.
10 So I just brought it along if anybody wanted to see.

11 MR. COMLEY: Your Honor, what I'd like to
12 do is have that marked as an exhibit. Unfortunately,
13 we're not going to have ten different forms of that for
14 review. I'm hoping that the Commission will allow us
15 leave to just have one of those available for inspection.
16 But I think it has been referred to and Mr. Crowder has
17 had it with there on the witness stand. Ms. Orler
18 mentioned it.

19 I would ask that that be marked and also,
20 after it's been marked, I'm going to offer it into
21 evidence.

22 JUDGE STEARLEY: I believe we can manage
23 with one copy of the blue piping. That should be marked
24 as Exhibit No. 112, I believe we're at at this point.

25 MR. COMLEY: And Madam Court Reporter, I'll

1 leave it up to you on how you want to mark that.

2 (EXHIBIT NO. 112 WAS MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 BY MR. COMLEY:

5 Q. With respect to Exhibit 112, the flexible
6 piping, are there imprinted on that piping certain
7 specifications for the pipe?

8 A. Yes, there are.

9 Q. And could you read those to the Commission,
10 please?

11 A. Well, it's CTS 200 PSI piping. It has an
12 SDR rating of 9, which is very good. And the ASTM is
13 2737, which is a little higher than the PVC, but the --
14 the SDR rating on this is a 9, which is very good, which
15 is the thickness of the wall compared to the size of the
16 pipe, and -- and I think you probably know very well that
17 that's important in this piping.

18 Q. Also, with respect to the brass fitting
19 that's on the pipe, can you give a brief description of
20 its usefulness for the pipe?

21 A. This is a brass compression-type fitting
22 that is used on, well, probably 99 percent of all city or
23 government jobs, you know.

24 Q. Would that be the kind of fitting that was
25 used on the causeway with respect to the flexible use --

1 flexible piping used on the inclines?

2 A. Yes. Ben helped me out here and showed a
3 picture of it.

4 Q. So you're referring to Exhibit 63, and that
5 would have been page 2 or -- that shows the mechanical
6 fitting that you're referring to?

7 A. Yes. Yes.

8 Q. Ms. Baker also asked you questions, and I
9 think again we're talking about terminology. Again, how
10 would you classify with respect -- well, let me go back to
11 this. What was the size of the replacement water main on
12 this project?

13 A. Four-inch.

14 Q. And how does that compare to when you say
15 water main or sewer main? Would that be typical for that
16 kind of application?

17 A. Both of them are four-inch, yes.

18 Q. And that's not unusual for that size of a
19 line?

20 A. No.

21 Q. Okay. Now, with respect to Exhibit 112,
22 what diameter is that?

23 A. This is a one-inch.

24 Q. And why was one-inch selected for purposes
25 of connecting the customer service lines?

1 A. Well, it's a -- I think that's a DNR
2 requirement. One-inch is the smallest, if I'm right, that
3 you can use for a service line.

4 Q. Now, with respect to control over that
5 flexible line, would that be in control of the customer or
6 would that be in control of the utility?

7 A. This -- this is the utility company's line.
8 From where we hooked on to their service line from there
9 on is theirs.

10 Q. All right. And in that respect, tell me
11 how you have described that for today's purposes. What
12 kind of a line would that be?

13 A. This?

14 Q. Right. It would not be -- would it be
15 called a main?

16 A. No. Well, I would call it a main extension
17 line, is what I would call it. You can call it a main
18 distribution line, you know, but it's a service -- it's
19 just terminology.

20 Q. Is it part of the customer service line --

21 A. No.

22 Q. -- in your opinion?

23 A. No, this isn't.

24 Q. There were several questions about the
25 distance between the flexible piping and the sewer main

1 and other sewer lines, and for me to get it straight for
2 me and the record, are there any places on the replacement
3 project, the water line replacement project where this
4 flexible piping is less than ten feet from a sewer line?

5 A. I believe that where we connected to their
6 service lines in the road, somewhere in the road, four
7 foot underneath, four to five feet, the contractor told
8 me, is a sewer line and the old water line. He used a
9 two-foot trencher, he said. So there is -- a sewer line
10 could be four to five feet under the water line somewhere
11 there.

12 Q. And that sewer line is under a cover of
13 some sort?

14 A. It's under four foot of road base.

15 Q. All right. And was that the area that you
16 were concerned about, if you were to be told that there
17 was not a ten-foot separation under the road, you wouldn't
18 want Commissioner Appling to go with you, is that what you
19 were talking about, or is that a different thing?

20 A. That's a different thing.

21 Q. Explain that to me.

22 A. Where we crossed and hooked up to the
23 service connection lines to the houses, the homeowners'
24 lines, in several cases around the lake there are --
25 they're closer than ten feet. Where we had to run our

1 lines to hook them up are closer than ten feet. Not our
2 mains or not our extension lines, but to hook the people
3 back up, we had to hook it up back to their existing water
4 line, and they are closer on their service lines.

5 Q. So the service lines that you connected to
6 were closer than ten feet?

7 A. Right.

8 Q. Were the customer service lines part of the
9 replacement project that we've been discussing with your
10 testimony today?

11 A. Not at all.

12 Q. Have all of the service connection lines or
13 water main extensions been installed in accordance with
14 the design specifications for the replacement project?

15 A. Yes, they have.

16 Q. Ms. Orler has talked about the service line
17 that was part of her -- her customer service line. Was
18 installation of the customer service line on Ms. Orler's
19 premises part of the replacement project?

20 A. No, it wasn't.

21 Q. You had some questions from Ms. Orler about
22 the extent of the project, and I think she referred to
23 Phase 1. Are you familiar with the term Phase 1?

24 A. I would assume it's the original water and
25 sewer line installation.

1 Q. Let me ask you this. Was the entire water
2 main for the island replaced in your project?

3 A. No, it wasn't.

4 Q. Do you know approximately how much was?

5 A. Right from that upper corner, right a
6 little farther around the corner, right about there, and
7 it came all the way around, all the way down through the
8 causeway.

9 Q. Okay. So there was line on the -- I'm not
10 too sure how to describe this, but there was other line
11 installed that was not affected by the replacement
12 project?

13 A. Yes.

14 Q. Other water line?

15 A. Yes.

16 Q. Do you know approximately how many square
17 feet -- or how many linear feet? If you don't, that's all
18 right?

19 A. I should, but I don't.

20 Q. All right. Mrs. Orlor -- Ms. Orlor also
21 asked you questions about how you knew certain things
22 about plans and specifications and how you knew certain
23 construction techniques. Could you tell the Commission
24 how many miles of water line in your life you have either
25 installed yourself or over which you had supervision in

1 its installation?

2 A. Well, I've done numerous subdivisions in
3 Colorado and in Vail, Colorado, that I was in charge of
4 the water/sewer line and usually the whole site
5 development. I've done that for approximately 2,500
6 homes. Then in Longmont I've done it over a million and a
7 half square feet of commercial water, sewer and site
8 development work.

9 Q. There were questions about changes made to
10 the plans and specifications. With respect to the
11 flexible pipe, was that a change order on the plans and
12 specs?

13 A. This was a change order with the engineer
14 because of this -- the original plans showed the water
15 line going back down the original road up above. There's
16 so many crossings and so much contamination in that area,
17 we got approval from the county to move that down and put
18 it in the road because we were repaving the road. So they
19 allowed us to go down and install this in the road to get
20 the separation. That changed the application that we
21 needed to get back up to the hill, and that's when we
22 decided to use this flexible pipe.

23 Q. In your experience, is it unusual to have
24 changes made in the field to the plans and specifications?

25 A. No, not at all.

1 Q. Do conditions in the field change?

2 A. Conditions change. It's like doing
3 anything, you never know until you get into it what you're
4 going to run into.

5 Q. In connection with your duties,
6 Mr. Crowder, do you also visit with city planners or city
7 public works departments about design specifications for
8 plumbing, piping, other design specifications for
9 construction installation of those kinds of things?

10 A. Yes, I have.

11 Q. Have you had occasion to visit with the
12 department of public works for the City of Columbia?

13 A. I've talked to them on the phone.

14 Q. In connection with this visit, have you
15 been given any information about how the City of Columbia
16 recommends or does not recommend flexible blue piping?

17 A. Right. They sent -- faxed me a paper
18 stating that this pipe is required by the City of Columbia
19 on any cul de sacs or any high-pressure situations, they
20 require this pipe to be used, and the mains specifically,
21 and this type. So Osage Beach also has now required this
22 pipe in their installations. Camdenton, I've talked to
23 them, and they are going to this pipe. I'm sure there's
24 more.

25 Q. In that area anyway?

1 A. In Missouri here, this is what I --

2 MR. COMLEY: I think I'm very close, but I
3 wanted to visit with Mr. Rusaw and Mr. McElyea just a
4 moment.

5 JUDGE STEARLEY: You may.

6 MR. COMLEY: Your Honor, what I'd like to
7 do now is simply offer Exhibit 112 into the record.

8 JUDGE STEARLEY: All right. Are there any
9 objections to the offering of Exhibit 112?

10 (No response.)

11 JUDGE STEARLEY: Hearing none, it shall be
12 admitted and received into evidence.

13 (EXHIBIT NO. 112 WAS RECEIVED INTO
14 EVIDENCE.)

15 MR. COMLEY: Also, in connection with
16 Mr. Crowder's testimony today, I did ask the clerk of the
17 City of Osage Beach to certify the design specifications
18 for water systems and under certificate have exhibits of
19 those design specifications, and with respect to that,
20 there is a page that I will denote where the flexible blue
21 piping is mentioned. Let me go ahead and distribute those
22 for the time being.

23 JUDGE STEARLEY: All right. You may.

24 MR. COMLEY: I think this would be
25 Exhibit 113.

1 JUDGE STEARLEY: That would be correct.

2 (EXHIBIT NO. 113 WAS MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 MR. COMLEY: On the strength of the
5 certification provided by Ms. Warner, I would offer
6 Exhibit 113 into evidence.

7 JUDGE STEARLEY: All right. Are there any
8 objections to the offering of Exhibit 113?

9 MS. BAKER: I would just want to point out
10 that most of it would be irrelevant except for the page
11 that would be dealing with exactly the pipe that we're
12 here to talk about today.

13 MR. COMLEY: And to the extent that that
14 background is unnecessary for analysis by the Commission,
15 I would certainly just have this page 7 as the area where
16 the pipe is mentioned. To the extent that there is
17 irrelevant issues concerning the remainder of the design,
18 that's fine. I wanted to give the complete document to
19 the Commission.

20 JUDGE STEARLEY: All right. It will be
21 admitted -- Ms. Fortney, do you have --

22 MS. FORTNEY: It's kind of minor, but I'm
23 not sure who this person is, but it says -- okay. She
24 signed it and everything, but it says affixed is a seal of
25 the city.

1 MR. COMLEY: That's on the original.

2 JUDGE STEARLEY: The original seal
3 sometimes doesn't transfer on the copies. The original
4 exhibit's been given to our court reporter; is that
5 correct?

6 MR. COMLEY: Yes.

7 MS. ORLER: I also have a question.

8 JUDGE STEARLEY: Yes, Ms. Orler.

9 MS. ORLER: On page 7, the application of
10 the pipe is concerned with water metered service lines,
11 city service lines. Even on page 7, I don't see how it's
12 applicable because it's all referring to again water
13 metered service, city service lines. We are definitely
14 rural. It's also referring to international plumbing
15 code, which have not been adopted in our area.

16 MR. COMLEY: The exhibit is offered to show
17 that Osage Beach has adopted a design specification which
18 calls for use of this pipe in a similar application that's
19 been used in Big Island. The distinction between city and
20 rural would be irrelevant.

21 JUDGE STEARLEY: For the purposes that it's
22 being offered, that would be irrelevant. This will be
23 admitted and received with the caveat that the Commission
24 is looking at page 7 of the document and all the other
25 matters would not be relevant to the service connection

1 lines that we're discussing today.

2 (EXHIBIT NO. 113 WAS RECEIVED INTO
3 EVIDENCE.)

4 MR. COMLEY: That concludes my redirect.

5 JUDGE STEARLEY: Mr. Crowder, you may step
6 down.

7 COMMISSIONER APPLING: Mr. Comley, would
8 you return to the --

9 MR. COMLEY: Absolutely.

10 JUDGE STEARLEY: Mr. Crowder, you will not
11 be finally excused as a witness just in case we'd like to
12 recall you for additional questions.

13 Commissioner Appling does have a question
14 for you, Mr. Comley.

15 MR. COMLEY: Certainly.

16 COMMISSIONER APPLING: I know we didn't all
17 come here this morning just to visit with each other, but
18 would you -- I will give Mrs. Orler the same privilege
19 here. We're here for an ancillary hearing this morning.
20 Help me out because I've been in Ameren all week and I
21 didn't do the reading I needed to do here. What was your
22 understanding of why we're here this morning?

23 MR. COMLEY: John MacEachen was called by
24 the Commission on the last day of hearing in this case on
25 March 2nd, and during the course of Mr. MacEachen's

1 testimony, Commissioner Gaw asked him questions about
2 Mr. Pugh's Exhibit 63.

3 COMMISSIONER APPLING: Right.

4 MR. COMLEY: There were certain
5 assumptions, my argument is certain assumptions were made
6 about the characteristics of that pipe which we felt very
7 strongly about needed to be clarified. We think
8 Mr. MacEachen was looking at the pipe and I think was not
9 clear on all the specifications being used, and to the
10 extent there was an improper assumption made, we wanted to
11 clear that up.

12 So our purpose today was to bring to the
13 Commission's attention the nature of this pipe, how it was
14 used and the way in which it was placed in trenches.

15 COMMISSIONER APPLING: Mrs. Orler, was that
16 your understanding?

17 MS. ORLER: My understanding is slightly
18 different, Commissioner Appling. I'm looking at the
19 transcript from the hearing in which Mr. Comley made his
20 request to provide written testimony from Mr. Kenneth
21 Carroll, because he was the construction contractor on
22 most of the installations, with his direct knowledge about
23 the installation of the service lines.

24 Obviously nine formal complaints were filed
25 against Folsom Ridge owning and controlling the homeowners

1 association, and a part of the issues of those complaints
2 was the incorrect installation of the water and sewer
3 system, which does include the service distribution lines
4 that we've been discussing today.

5 COMMISSIONER APPLING: Okay.

6 JUDGE STEARLEY: Well, the Order granting
7 Folsom Ridge and the Association to provide the additional
8 testimony did not restrict Folsom Ridge or the Association
9 to provision of testimony by any particular witness. It
10 was restricted to the subject matter of the service line,
11 and the testimony of Mr. Crowder was what was offered and
12 what was accepted.

13 COMMISSIONER APPLING: Okay. I think that
14 ends what I needed. Thank both of you for your comments.
15 I'm just trying to get clear what -- I need to make a
16 decision on here pretty soon, so I wanted to make sure I'm
17 clear on it. Thank you very much.

18 JUDGE STEARLEY: Thank you, Mr. Comley. At
19 this time, Ms. Orler, it is your turn to take the stand to
20 offer into evidence your rebuttal and surrebuttal
21 evidence, and do you have copies of your testimony with
22 you?

23 MS. ORLER: I do. It's going to take me
24 just a second to get it. I gathered up everything
25 quickly.

1 JUDGE STEARLEY: Also bring with you any of
2 those other documents you intended to offer. I believe we
3 looked at three or four. And we need to have your
4 rebuttal testimony marked by the court reporter, It will
5 be Exhibit No. 114, and your surrebuttal marked as
6 Exhibit 115. If you will give the reporter those copies
7 so she can mark them. She can hand them back to you for
8 reference on the stand.

9 (EXHIBIT NOS. 114 AND 115 WERE MARKED FOR
10 IDENTIFICATION BY THE REPORTER.)

11 JUDGE STEARLEY: Ms. Orlor, if you would
12 raise your right hand, I'll swear you in.

13 (Witness sworn.)

14 CATHY J. ORLER testified as follows:

15 QUESTIONS BY JUDGE STEARLEY:

16 Q. Would you please state and spell your name
17 for the record.

18 A. My name is Cathy J. Orlor; Cathy spelled
19 with a C, C-a-t-h-y. My middle name is Jo, J-o, and the
20 last name is Orlor, O-r-l-e-r.

21 Q. And it's your understanding that your
22 rebuttal testimony to Mr. Crowder's testimony has been
23 marked as Exhibit 114?

24 A. That is correct.

25 Q. And that your surrebuttal testimony's been

1 marked as Exhibit 115?

2 A. That is also correct.

3 Q. And you do have copies of those in front of
4 you?

5 A. Yes, your Honor, I do.

6 Q. Okay. With respect to those two exhibits,
7 do you have any changes that you would like to make at
8 this time?

9 A. The only changes would be a common
10 terminology that we have discussed today with regards to
11 the lines.

12 Q. Okay. If you can -- if you're making
13 changes to specific lines or words in the testimony, can
14 you identify those, or are you just changing something
15 terminology, generally speaking, as you used throughout
16 the testimony?

17 A. Generally, as did Mr. Crowder with regards
18 to the service lines, I think that those can be -- the
19 terminologies can be used interchangeably. We're talking
20 about the lines coming from the main four-inch line
21 encompassing the island, coming from that to the service
22 connection under the road.

23 Q. All right. I think we all understand that
24 regardless of the terminology being employed. If you were
25 asked these same questions today, would you answer --

1 would your answers be substantially the same?

2 A. Yes, they would.

3 Q. And are your answers true and correct to
4 the best of your knowledge, information and belief?

5 A. Absolutely, yes.

6 JUDGE STEARLEY: And with that, would you
7 like to offer Exhibits 114 and 115 into evidence?

8 MS. ORLER: Yes.

9 MR. COMLEY: Your Honor, we have objections
10 to both of the exhibits. On March 29th I filed written
11 objections, and with -- keeping in mind that, as we did in
12 the previous hearing, I think I would be content at this
13 point simply to impose on the hearing examiner, Judge
14 Stearley, to review these objections in connection with
15 the final disposition of the case.

16 I recollect that we did have a chance to
17 test the flavor of these objections with the Court, and
18 again, would adopt that procedure for purposes of
19 resolving these objections.

20 JUDGE STEARLEY: Okay. I've had the
21 opportunity to review your objections, Mr. Comley, and
22 given that I've got the others to take with the case
23 already, I'm going to go ahead and rule on your objections
24 right now.

25 With regard to your objections from page 1,

1 lines 11 through 15, through page 2, lines 10 through 13,
2 I will overrule.

3 MS. ORLER: Excuse me, your Honor. Which
4 exhibit?

5 JUDGE STEARLEY: Do you have a copy of
6 Mr. Comley's prefiled objections?

7 MS. ORLER: No, I don't. I'm sorry.

8 JUDGE STEARLEY: Mr. Comley, would you have
9 another copy, or Staff, that you could share with
10 Ms. Orler?

11 MR. COMLEY: I do not have another copy
12 with me.

13 MS. ORLER: Thank you.

14 JUDGE STEARLEY: So the first four items,
15 page 1, lines 11 through 15, through page 2, lines 10
16 through 13, I will overrule.

17 For the remainder of the objections from
18 page 2, lines 14 through 18 through page 11, line 6
19 through 10, I will sustain, exceeding the subject matter
20 of the hearing or relevant hearsay objections that were
21 filed. Those objections are sustained.

22 Regarding the schedules that accompany,
23 those objections will be sustained and those schedules
24 will be excluded from the evidence. I believe Schedule 3
25 was already in evidence --

1 MR. COMLEY: I think that is correct.

2 JUDGE STEARLEY: -- as Exhibit 44.

3 MS. ORLER: Excuse me, your Honor. These
4 schedules, some of the schedules that were included were
5 filed as a part of my formal complaint as well.

6 JUDGE STEARLEY: The formal complaint
7 document itself is a pleading which is not considered to
8 be evidence. The assertions by complainants, attorneys,
9 parties, just like opening statements, closing arguments,
10 are not evidence. Evidence is what's been formally
11 offered at hearing and been subject to cross-examination
12 and to objections.

13 MS. ORLER: Thank you.

14 JUDGE STEARLEY: On the surrebuttal
15 testimony, the objections to surrebuttal testimony being
16 filed on surrebuttal testimony is sustained.

17 MS. ORLER: Excuse me, your Honor. May I
18 ask a question?

19 JUDGE STEARLEY: Yes, you may.

20 MS. ORLER: My surrebuttal testimony
21 clearly states that I was rebutting the testimony of
22 Mr. Benjamin D. Pugh for the purposes of clarification and
23 to substantiate with support documentation those
24 statements provided in the rebuttal that have been
25 disputed as incorrect statements by Mr. Merciel. So I was

1 rebutting Mr. Pugh's testimony.

2 JUDGE STEARLEY: Right. Anything that
3 references, actually references Mr. Pugh's testimony is
4 acceptable. Anything referencing Mr. Merciel's testimony
5 is not. For that, it will be sustained.

6 I think I had a question regarding
7 Schedule 2.

8 MR. COMLEY: Your Honor, with respect to
9 Schedule 2 --

10 JUDGE STEARLEY: I was wondering if that
11 was already in evidence.

12 MR. COMLEY: I'm not too -- I don't think
13 that is in evidence, but I notice this is an incomplete
14 document. At the same time, I do have a copy of the
15 complete document and would have no objection to the
16 introduction of Mrs. Orler's Schedule 2 on her surrebuttal
17 if the cover page were made part of the exhibit. I would
18 prefer it would be a separate exhibit, and I do have
19 copies of that for distribution to the parties.

20 JUDGE STEARLEY: All right. Are there any
21 objections to the full copy of the exhibit?

22 (No response.)

23 JUDGE STEARLEY: Let's mark that as
24 Exhibit 116, and hearing no objections, it will be
25 admitted and received into evidence, or did you have an

1 objection.

2 MS. BAKER: I haven't seen it yet.

3 JUDGE STEARLEY: Don't let me jump the gun
4 here.

5 (EXHIBIT NO. 116 WAS MARKED FOR
6 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

7 MS. BAKER: Sorry. No, I have no
8 objections.

9 JUDGE STEARLEY: Schedule 1 is incomplete
10 in the first page of Exhibit 59, so as filed with the
11 surrebuttal testimony, that will be excluded.

12 And were there any objections to the e-mail
13 that was included, the final document --

14 MS. HOLSTEAD: Your Honor --

15 JUDGE STEARLEY: -- in surrebuttal
16 testimony?

17 MS. HOLSTEAD: 393 has no objection to the
18 inclusion of that document.

19 MS. ORLER: Excuse me, your Honor. Did you
20 say that Schedule 1 was incomplete on the rebuttal
21 testimony?

22 JUDGE STEARLEY: I believe the surrebuttal.

23 MS. ORLER: Oh, surrebuttal. Sorry.

24 JUDGE STEARLEY: That's the first page of
25 Exhibit 59, so it is already in evidence in a complete

1 form.

2 MS. ORLER: Yes. Correct.

3 JUDGE STEARLEY: But this incomplete form
4 will not be entered.

5 MS. HEINTZ: Your Honor, just for
6 recordkeeping purposes of my own, have you excluded the
7 entirety of Exhibit 115 that's the surrebuttal?

8 JUDGE STEARLEY: Any questions referencing
9 from Mr. Merciel's testimony are excluded.

10 Now, Ms. Orler, I believe during the course
11 of your cross-examination of Mr. Crowder we had marked
12 some additional exhibits, starting with, I believe,
13 Exhibit 108, which were pictures.

14 MS. ORLER: The photographs.

15 JUDGE STEARLEY: Would you like to offer
16 that into evidence?

17 MS. ORLER: Yes, your Honor, I would.

18 MR. COMLEY: Your Honor, there's been no
19 foundation laid for these photographs. Furthermore, I
20 question the relevance of any photographs that do not deal
21 with the flexible blue piping.

22 JUDGE STEARLEY: Can't seem to find my copy
23 of that. Does someone else have a copy they could show me
24 real quick. That's right, I think I gave it to
25 Commissioner Appling.

1 Ms. Orler, your response to the objections?

2 MS. ORLER: Mr. Crowder has stated in his
3 testimony that the water line replacement on Big Island
4 has been complete. I am offering into evidence these
5 photographs to indicate that if the project is complete,
6 there's still locations on the island that do not have a
7 ten-foot separation, and if Mr. Crowder was unable to give
8 any other information from looking at the photographs, can
9 he provide us with information as to whether or not blue
10 piping was used on these?

11 MR. COMLEY: Your Honor, it's not been
12 established that the service lines for customers were part
13 of the replacement project. In fact, quite the contrary
14 has been shown.

15 MS. ORLER: These are not customer service
16 lines, Mr. Comley. These are -- the terminologies that we
17 wrote down, these are, according to Mr. Crowder, trunk
18 distribution lines. Each one of these photographs connect
19 to the main. They go underneath the road and connect to
20 the main. I am not connected to the water and sewer
21 service. I have no private customer service line. My
22 photograph of my residence is included on the first page.

23 MR. COMLEY: We've already heard the
24 explanation of why that separation is at that level.

25 JUDGE STEARLEY: Yes, we have, and these

1 pictures don't establish any evidence that I can see in
2 regard to the blue flexible piping. They will be excluded
3 as exceeding the scope of the ancillary hearing.

4 Okay. Exhibit 109, we have a letter dated
5 February 24th to Mr. Rick Rusaw from Ms. Orler. Are there
6 any objections to the admission of Exhibit 109?

7 MR. COMLEY: Your Honor, there really is --
8 it was used for the purposes of talking to Mr. Crowder
9 about whether he understood that he had -- any errors were
10 made -- regarding questions about errors made during the
11 course of the replacement project, and he did not have any
12 understanding about that.

13 Again, I question the relevance of this
14 with respect to the blue piping. Furthermore, I'm not too
15 clear whether there can be any -- I guess the idea it
16 could be sent, but there's no proof that it was received.

17 JUDGE STEARLEY: Ms. Orler, your response
18 to the relevancy? I'm not so worried as much about
19 authentication since this is Ms. Orler's letter, but in
20 terms of the objection to relevancy.

21 MS. ORLER: Mr. Crowder has stated both in
22 his testimony written and orally today that his
23 responsibilities and duties as employed by Mr. Golden with
24 Folsom Ridge was for the water line replacement project,
25 which he has stated is complete. My water service

1 connection main and my sewer service connection main that
2 goes underneath the road, as Mr. Crowder has already
3 testified to, was not replaced as a part of that project.

4 This is, however, a part of the water
5 replacement project as testified to by Mr. Crowder. I'd
6 like to know why mine were not replaced with a separation
7 of ten feet. He has said that they were not replaced.

8 MR. COMLEY: And he explained why they were
9 not replaced with that distance.

10 JUDGE STEARLEY: I believe that is
11 already -- those questions have been answered in the
12 course of Mr. Crowder's examination. I don't find the
13 document relevant to the subject matter, and it will be
14 excluded.

15 MS. ORLER: Your Honor, may I also add one
16 other thing?

17 JUDGE STEARLEY: Certainly.

18 MS. ORLER: This document reflects the
19 fact, I obviously am disputing the landscaping answer
20 provided in Mr. Crowder's testimony. This document states
21 that my line was not replaced because Folsom Ridge and
22 representatives of Folsom Ridge were insisting that I owed
23 fees to the HOA, not being a member, not receiving any
24 service, and only if I paid those fees would my water line
25 be correctly reinstalled. This references nothing about

1 landscaping.

2 JUDGE STEARLEY: Again, those are subject
3 matters that are beyond the scope of this proceeding with
4 the installation of the blue flexible piping. So I do not
5 find this document to be relevant. It will be excluded.
6 Looking to Exhibit 111.

7 MR. COMLEY: 110, Judge? I don't think
8 we've made a ruling on 110 yet.

9 JUDGE STEARLEY: My apologies. I skipped
10 over 110.

11 MR. COMLEY: Your Honor, 110 is -- we've
12 received excerpts, but there is nothing indicating
13 appropriate authentication for this document. There's
14 been no custodian of records presented this morning to
15 identify this document as being on file or kept in the
16 records of DNR, which I understand from various
17 representations from Ms. Orler that's where they acquired
18 this.

19 There is no -- I have not been given or
20 filed an affidavit under the Uniform Business Records as
21 Evidence Act in Chapter 490 by which to review this in
22 advance. As a consequence, any document that's submitted
23 like this is hearsay and is not admissible.

24 JUDGE STEARLEY: Ms. Orler, is this the
25 document that you had some type of authentication for,

1 some certification for?

2 MS. ORLER: I have authentication for all
3 of the documents that I received from DNR, yes, your
4 Honor.

5 JUDGE STEARLEY: And that includes this
6 document?

7 MS. ORLER: And which document is this?

8 JUDGE STEARLEY: It's the one we marked as
9 Exhibit 100. It was your -- the engineering report for
10 water line improvements at Big Island, Camden County.

11 MS. ORLER: Is this dated March the 8th of
12 2005?

13 JUDGE STEARLEY: I don't see a date on this
14 document. Thank you, Ms. Heintz.

15 MS. ORLER: Yes, I have authentication for
16 this document, your Honor.

17 JUDGE STEARLEY: May we see that
18 authentication?

19 MS. ORLER: Yes.

20 JUDGE STEARLEY: And you can begin by
21 showing the parties.

22 MS. ORLER: It will take me just a minute
23 to go through this.

24 JUDGE STEARLEY: That's fine. Go ahead and
25 take a moment and find what you have there. And do you

1 have a complete form of this document as opposed to the
2 select pages?

3 MS. ORLER: I have a complete authenticated
4 form.

5 MR. COMLEY: Your Honor, we'll renew our
6 objection. The manner in which the business records
7 affidavit needed to have been submitted to me would have
8 been at least seven, maybe ten days before hearing. I
9 object to the use of the business records affidavit, and
10 we had a DNR custodian here to go through all these
11 records previously. I did that pursuant to my own
12 subpoena.

13 I would object to any records that are
14 being offered under the authentication document that
15 Ms. Orler has right here. It was dated the 21st day of
16 March. I don't know. I guess it was 2007. But even
17 under that section we were entitled to advance notice of
18 this.

19 Furthermore, we're dealing with a document
20 that was purportedly prepared by Mr. Krehbiel, and
21 Mr. Krehbiel was here. He could have authenticated that
22 document then. And since the issues that we are dealing
23 here today are with the flexible blue pipe, this would
24 have been more along the lines of Complainant's case in
25 chief, and I think that should have been done then.

1 JUDGE STEARLEY: May I see the
2 authentication documents that you have, Ms. Orler?

3 MS. ORLER: (Inaudible.)

4 THE REPORTER: Ms. Orler, I can't hear you.

5 MS. ORLER: These are the documents that
6 DNR provided that shows a payment, authentication.

7 JUDGE STEARLEY: You gave me a whole stack
8 here. Are we just looking at these two?

9 MS. ORLER: Well, she authenticated a
10 grouping of 103 documents.

11 JUDGE STEARLEY: Is that this affidavit
12 here?

13 MS. ORLER: Yes. That's why I kept them in
14 the same order. I did not do anything to them. They were
15 paper clipped. They remain paper clipped. And this
16 document does refer to blue piping used for the project,
17 the scope of the project.

18 JUDGE STEARLEY: This is the specific one
19 we're talking about?

20 MS. ORLER: Yes, it is. Uh-huh, the
21 service connections, the type of pipe to be used and what
22 is being replaced.

23 JUDGE STEARLEY: Okay. If Ms. Orler
24 provides this in its complete form separate from the other
25 piles of documents with the authentication she has, I will

1 accept it into evidence as a late-filed exhibit.

2 MS. ORLER: So in its entirety and include
3 a copy of the authentication authenticating 103 pages?

4 JUDGE STEARLEY: Of which that is part
5 thereof.

6 MR. COMLEY: Your Honor, I think that the
7 parties would be entitled to review the authentication,
8 all the authenticated documents. If there's 103 documents
9 authenticated, then each party needs to have a copy of
10 that, first to assure that the documents do comport with
11 the affidavit of the custodian, and -- at any rate, I
12 think that the parties should have the entire -- I would
13 like to have the entire bulk of the documents that were
14 authenticated by DNR.

15 JUDGE STEARLEY: All right. Can you
16 provide those, Ms. Orler?

17 MS. ORLER: Will Mr. Comley pay the charges
18 that we paid for these documents?

19 MR. COMLEY: No. I do not think I have to
20 do that.

21 JUDGE STEARLEY: If you're offering that as
22 evidence, you would have to.

23 MS. ORLER: I'm not offering all entire 103
24 documents, your Honor.

25 JUDGE STEARLEY: Mr. Comley's objection,

1 though, is to make sure the certification applies to this
2 individual document that was certified within a group of
3 documents.

4 MR. COMLEY: Given that the rules would
5 require at least seven days advance notice before that
6 affidavit would have effect in this proceeding, I think it
7 only fair that I be allowed to see the entire
8 documentation that has been authenticated by DNR.

9 Furthermore, in my subpoena to DNR, I
10 requested almost all documents pertaining to this project,
11 some of which I think may not have been disclosed, and
12 that's another issue. So that makes it very important for
13 me to see what you have authenticated.

14 MS. ORLER: Is that not an issue between
15 DNR and Mr. Comley?

16 JUDGE STEARLEY: No, it is not. It's an
17 issue between what you're offering as evidence. My
18 instructions will be to offer that as a late exhibit,
19 specifically that document into evidence, but you will
20 need to provide the other parties that request a copy of
21 all of those to review the integrity of the certification
22 so that they may raise appropriate objections.

23 I will leave that to the other parties to
24 decide if they wish to view all 103 documents, but at a
25 minimum Folsom Ridge and the Association is entitled to

1 review that all as a packet to be able to raise any proper
2 objections that they wish.

3 MS. BAKER: Your Honor, may I suggest that
4 would it be acceptable if Ms. Orler made them available
5 for review in our respective offices?

6 JUDGE STEARLEY: That is acceptable to me
7 as long as the parties have the opportunity to fully
8 review those documents. And as I said, then, when that is
9 offered, they will be subject to any appropriate
10 objections. Is that acceptable, Mr. Comley?

11 MR. COMLEY: Yes, I'll do that.

12 MS. ORLER: And, your Honor, what exhibit
13 number did you assign the one specific document?

14 JUDGE STEARLEY: Exhibit 110.

15 MS. ORLER: Thank you. Then with regard to
16 Exhibit 111, which had to do with --

17 MR. COMLEY: Your Honor, this has not been
18 verified by any representative of the supplier.

19 JUDGE STEARLEY: Ms. Orler, your response?

20 MS. ORLER: Is this the document with
21 regards to the installation specifications from Centennial
22 Plastics?

23 JUDGE STEARLEY: Yes. It says Chapter 7
24 underground installation of polyethylene piping.

25 MR. COMLEY: Another thing, this is

1 hearsay. The other thing, there's no way to cross-examine
2 the person who designed this kind of document or to have
3 him subjected to cross-examination about various other
4 conditions that could affect the bedding material that
5 could be used for this particular piping.

6 I think that it's hearsay. It's not
7 subject to cross-examination. It's not been properly
8 authenticated. I'm not even sure -- or that there is any
9 reference to the Syncore pipe on this document.

10 JUDGE STEARLEY: And that is my problem
11 with this document. Not only is it unauthenticated, but
12 it's not been directly attributable to apply to the
13 particular piping that we have at issue in this case. I'm
14 going to sustain the objection. This will be excluded.

15 And I believe that is all of the documents
16 that I have. So at this point, Ms. Orler, you're open for
17 cross-examination, beginning with Office of Public
18 Counsel?

19 CROSS-EXAMINATION BY MS. BAKER:

20 Q. Hello, Ms. Orler.

21 A. Hi.

22 JUDGE STEARLEY: I believe my order on the
23 ancillary hearing referred to direct and cross-examination
24 of Mr. Crowder, but having given the parties the
25 opportunity to go ahead and submit their evidence at this

1 point, I think we'll go ahead and do a round of cross.

2 MS. BAKER: Okay. Thank you.

3 BY MS. BAKER:

4 Q. I just have a couple of questions. You
5 heard Mr. Crowder's testimony regarding your request for
6 moving the trunk main line. Did you request that that
7 trunk main line be moved to within ten feet of a sewer
8 line?

9 A. Are you talking about on my property?

10 Q. On your property.

11 A. Yes, ma'am, I did.

12 Q. Why did you request that it be moved?

13 A. Because of the contamination, possible risk
14 of cross-contamination and the health risk that existed.

15 Q. Okay. I don't think you understood my
16 question. Did you ask that it be moved to closer than ten
17 feet?

18 A. Oh, no, ma'am.

19 Q. I'm sorry. That was the question that I
20 meant to say.

21 Okay. There was an Exhibit 116 that was
22 added in, and I believe the second page was part of your
23 testimony, and it was -- it was the -- it is now
24 Exhibit 116, a letter from Breck Summerford. Do you have
25 that in front of you?

1 A. Which testimony? It was a schedule of my
2 testimony?

3 Q. It was one of your schedules, but now it is
4 an exhibit straight by itself.

5 A. Just one moment. Let me look for it.

6 JUDGE STEARLEY: It was Schedule 2, but now
7 we have the complete document.

8 THE WITNESS: Okay. I have it in front of
9 me.

10 BY MS. BAKER:

11 Q. Do you have in front of you the second
12 page?

13 A. Yes.

14 Q. Under the brief description, the second
15 paragraph, they are talking about homes that share a
16 common one-inch PVC line under the roadway. Is it your
17 understanding that, from Mr. Crowder's testimony, that
18 some of that one-inch PVC line was changed to be one-inch
19 blue flexible piping?

20 MR. COMLEY: Your Honor, I'm going to
21 object to the line of questioning. It asks witnesses to
22 try to understand the testimony of other witnesses.

23 JUDGE STEARLEY: I will sustain.

24 MS. BAKER: That's all the questions that I
25 have.

1 JUDGE STEARLEY: All right. Thank you,
2 Ms. Baker. Cross-examination by Staff?

3 MS. HEINTZ: No questions. Thank you.

4 JUDGE STEARLEY: Chapter 393 companies?

5 MS. HOLSTEAD: No questions, your Honor.

6 JUDGE STEARLEY: Folsom Ridge and the
7 Association?

8 MR. COMLEY: No questions, your Honor.

9 JUDGE STEARLEY: Okay. There are no
10 questions from the Bench, no recross. Ms. Orler, you were
11 asked basically one or two questions by Ms. Baker. If you
12 would like to respond a little bit more in terms of those,
13 the questions that were asked you on cross-examination,
14 you may do so at this time. You're restricted solely to
15 the questions that you were asked by Ms. Baker, and the
16 question that I sustained the objection on you cannot
17 comment on.

18 MS. ORLER: Ms. Baker had asked if I would
19 have made the request that my water and sewer line be
20 moved a lesser distance than a ten-foot separation; is
21 that correct? I would never have made that request.

22 My formal complaint and nearly two years
23 with the filings of pleadings before the Commission has
24 been a request for safe and adequate service of the water
25 and sewer system utility on Big Island. I would never

1 have made the request to have my water and sewer line
2 placed at a lesser distance separation than ten feet.

3 JUDGE STEARLEY: Thank you, Ms. Orlor. At
4 this time you may step down?

5 MS. ORLER: May I --

6 JUDGE STEARLEY: If you have more, yes, if
7 it's on that one question.

8 MS. ORLER: It's regarding the other
9 question that Ms. Baker asked.

10 JUDGE STEARLEY: But that was the one I
11 sustained the objection to, so to that one you may not
12 comment further.

13 MS. ORLER: Okay.

14 JUDGE STEARLEY: All right. You may step
15 down at this time, although you will not be finally
16 excused in case the Commissioners wish to recall you for
17 additional questioning.

18 We've been going for a couple hours now.
19 I'd like to give our court reporter a break. However, I
20 don't believe, unless the parties tell me otherwise, that
21 with Mr. Pugh's presentation of evidence and with Staff's
22 presentation of evidence, that there'll be a great deal
23 more time involved with the hearing this morning.

24 So asking the parties, do you want to take
25 a short break now, come back and finish up, or were the

1 parties interested in breaking for lunch, coming back
2 after lunch?

3 MS. BAKER: I just have a few questions. I
4 think we can just take a quick break and come back.

5 MR. COMLEY: We agree.

6 JUDGE STEARLEY: Ms. Orler?

7 MS. ORLER: That's fine.

8 JUDGE STEARLEY: All right. We'll take
9 about a ten-minute break. We'll come back and finish up.

10 (A BREAK WAS TAKEN.)

11 JUDGE STEARLEY: All right. We are back on
12 the record, and we are picking up with Mr. Benjamin Pugh
13 who's going to offer his rebuttal testimony into evidence?
14 If you'd please take the stand. Do you have a copy of
15 your testimony with you, Mr. Pugh?

16 MR. PUGH: Yes, sir.

17 JUDGE STEARLEY: Please raise your right
18 hand, I'll swear you in.

19 (Witness sworn.)

20 BENJAMIN D. PUGH testified as follows:

21 QUESTIONS BY JUDGE STEARLEY:

22 Q. All right. And, Mr. Pugh, if you'll please
23 state and spell your name for the record.

24 A. Benjamin D. Pugh, B-e-n-j-a-m-i-n, middle
25 initial D, P-u-g-h.

1 Q. All right. Mr. Pugh, did you cause to be
2 prepared certain rebuttal testimony for today's ancillary
3 hearing?

4 A. Yes, sir, I did.

5 Q. All right. And I believe we're up to
6 Exhibit 117. We'll mark that as 117. And do you have a
7 copy of that before you?

8 A. Yes, sir.

9 Q. Okay. And are there any corrections you
10 would like to make to your testimony at this time?

11 A. Not that I'm aware of, sir.

12 Q. All right. And if I were to ask you the
13 questions asked in your testimony today, would your
14 answers today be substantially the same?

15 A. I would say so, yes, sir.

16 Q. And are your answers true and correct to
17 the best of your knowledge, information and belief?

18 A. Yes, sir.

19 JUDGE STEARLEY: All right. And at this
20 time would you like to offer Exhibit No. 117 into
21 evidence?

22 MR. PUGH: Yes, sir.

23 JUDGE STEARLEY: All right. Are there any
24 objections to the admission of Exhibit 117?

25 MR. COMLEY: Your Honor, Folsom did file

1 written objections to Mr. Pugh's testimony in the
2 ancillary proceeding, and we have noted objections to
3 page 1, lines 5 through 19, and page 2, lines 11 through
4 22.

5 JUDGE STEARLEY: To the extent that page 1,
6 lines 5 through 19 are cumulative, the objection will be
7 sustained. On page 2, I will allow the testimony as
8 Mr. Pugh's personal opinion.

9 Are there any other objections?

10 (No response.)

11 JUDGE STEARLEY: Hearing none, Exhibit 117
12 as so noted with regards to the objections will be
13 received and admitted into evidence.

14 (EXHIBIT NO. 117 WAS MARKED FOR
15 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

16 MR. PUGH: Judge, could you -- on page 2,
17 could you give me those line numbers again?

18 JUDGE STEARLEY: Certainly. Page 2,
19 lines 11 through 22, and for those I did not sustain the
20 objection. I am allowing that testimony.

21 MR. PUGH: Fine. Thank you.

22 JUDGE STEARLEY: All right. Mr. Pugh, we
23 will now tender you for cross-examination, beginning with
24 the Office of Public Counsel, Ms. Baker.

25 CROSS-EXAMINATION BY MS. BAKER:

1 Q. Good morning. Good afternoon now,
2 Mr. Pugh.

3 A. Well, straight up and down.

4 Q. Pretty close. Pretty close. All right.
5 The blue flex piping that you refer to in your -- in your
6 rebuttal testimony, can you explain to us the reasons why
7 you thought it necessary to file rebuttal directly on the
8 blue piping?

9 A. Yes, ma'am. Today we spent most of the day
10 considering the quality of the blue pipe, but that in
11 my -- in my testimony, that was not my major concern. My
12 major concern was that the blue pipe was actually crossing
13 perpendicular to a sewer line approximately 18 inches
14 above a sewer main without having a sleeving over it.

15 Whenever on -- whenever the main lines
16 cross each other, they're required to have a sleeving to
17 go ten foot on each side of the overpass. In my opinion,
18 there's -- the safety, the health risks are just as
19 important in a service line as they would be in a main
20 line.

21 That was the primary -- primary reason for
22 my rebuttal was the close proximity where these -- this
23 blue line and the connection of the blue line was -- is
24 directly above a sewer line, far less than the ten-foot
25 minimum, more like 18 inches.

1 Q. Okay. Let me make a clarification. You
2 stated service line, but were you talking about the
3 private customer service line or were you talking about
4 this blue flex distribution main?

5 A. I'm referring to -- I'm referring to the
6 service line between the main, and in this case it goes
7 all the way to the private because there is no -- there is
8 no upright with a valve. So basically I'm -- as far as
9 the blue line is concerned, I don't know where you divide
10 between the two because there is no upright or a valve to
11 isolate the two.

12 MS. BAKER: No further questions.

13 JUDGE STEARLEY: Thank you, Ms. Baker.
14 Cross-examination by Staff?

15 MS. HEINTZ: No questions. Thank you.

16 JUDGE STEARLEY: Chapter 393 companies,
17 Ms. Holstead?

18 MS. HOLSTEAD: No questions, your Honor.

19 JUDGE STEARLEY: Folsom Ridge and the
20 Association.

21 CROSS-EXAMINATION BY MR. COMLEY:

22 Q. Mr. Pugh, with respect to some questions
23 that Ms. Baker asked you, as I understand the
24 configuration of the blue pipe, at least on Exhibit 63,
25 for instance, it travels up a hill to a customer's service

1 line connection; would that be a fair statement?

2 A. Yes, sir.

3 Q. And your concern with respect to that blue
4 line was that it may have been too close to the sewer
5 main?

6 A. Yes, sir. It's crossing perpendicular to
7 a -- to a sewer main, crossing over the top of it probably
8 around 18 inches.

9 Q. Now, let me ask you this: It's possible
10 for a water line under pressure and a sewer line under
11 pressure to be located within the same trench as long as
12 there's a particular shelf set up for separation; is that
13 correct?

14 A. Yes. That is an alternative in the design
15 guide.

16 Q. All right. Let me go on with this. If the
17 separation between those pipes is around 18 inches in the
18 same trench, isn't it true that DNR accepts that as a
19 compliant design for water and sewer in the same trench?

20 A. Would you repeat that again?

21 Q. If we use the same shelf, that shelf idea,
22 isn't it true that DNR would accept a separation of
23 18 inches between the water and sewer mains if they're in
24 the same trench?

25 A. That's a hard question to ask, Mr. Comley,

1 because --

2 Q. Do you know? If you don't, that's fine.

3 But I thought maybe you did know that that was an
4 acceptable design for installing water and sewer lines in
5 the same trench.

6 A. I -- they consider that having a -- having
7 a water line on a shelf, off to the side on a shelf, I do
8 know they consider that as being in the same trench, if
9 that's answering what you asked.

10 Q. Let's go the next step, and that would be
11 the separation, the distance of separation. Isn't it true
12 that DNR considers 18 inches as satisfactory separation
13 between those pressurized lines?

14 A. Well, to answer that question, if that was
15 the case, then why would they insist on the reinstallation
16 of the water line and make it ten foot?

17 Q. If you don't know that, that's fine. Okay.
18 Now, let me ask you this: Your concern was having the
19 blue flexible pipe be within 18 inches, as I understood
20 your testimony?

21 A. Yes, sir. It's less than ten foot.

22 Q. So if it was less than ten feet. Now,
23 again, there are no regulations establishing ten feet; is
24 that correct?

25 A. They don't call them regulations. I think

1 I refer to them in my testimony probably as regulations.
2 Actually, they call them design guides, which I don't know
3 what the difference is between a design guide and a
4 regulation.

5 Q. And we've established earlier that DNR does
6 not regulate the private customer service line; isn't that
7 correct?

8 A. Well, depends on which one you're talking
9 about. Actually --

10 Q. The private customer service line is what
11 I'm talking about.

12 A. All right. I'm referring to the private,
13 on my private property.

14 Q. Right. DNR does not have any regulation on
15 that private property service line; is that correct?

16 A. Well, actually, no.

17 Q. Okay.

18 A. Could I explain, sir?

19 Q. Well, no. Here's my question for you.

20 A. I didn't think you'd want me to.

21 Q. Here's my question for you: If the sewer
22 line, say, for instance, at the location on Exhibit 63,
23 the sewer line that's right there in front of the location
24 on Exhibit 63 is four feet below grade at that location,
25 doesn't that satisfy your concern?

1 A. No, because the -- because the water line
2 they took out and installed this blue line, it's -- it's
3 two foot under the top of the ground because it has to be
4 buried in a frost free, you know, below the frost line.

5 Q. So you're saying that the water main is at
6 least 24 inches from the hypothetical sewer line, and the
7 flexible line would be even farther than that; would that
8 be correct?

9 A. No, I don't think that would be correct. I
10 think you're -- my -- I wasn't there, but I would say that
11 they took out this main four-inch line, which the -- which
12 this one-inch service line was connected right into it.
13 So basically I would -- I wasn't there, but I would guess
14 that the one-inch service line was just about the same
15 distance from the sewer line as was the old water main.

16 Q. Let me ask you this, then: Would you be
17 satisfied that the lines were properly separated if there
18 were four feet of cover between the flexible blue line and
19 the sewer line?

20 A. I would be -- I would be -- the answer to
21 your question is no.

22 MR. COMLEY: All right. That's all I
23 needed to know. Thank you. I have no other questions.

24 JUDGE STEARLEY: Thank you, Mr. Comley.
25 There are no questions from the Bench. There will be no

1 recross. Mr. Pugh, you're entitled at this point if you
2 would like to offer some additional information to the
3 Commission regarding the questions you were just asked on
4 cross-examination, no subject matter beyond that.

5 MR. PUGH: Yes, your Honor. I -- on this
6 last question Mr. Comley just asked me, the -- in the
7 drawings which they used to install this system, reinstall
8 the water system, there is a diagram in there that shows
9 the two mains crossing each other, and with the directions
10 to whenever you have a water and a sewer line crossing
11 perpendicular, that you put a sleeving around the lines
12 to -- with ten foot on each side of the -- where they pass
13 each other.

14 The reason for that is to where if there is
15 a major leak, the water -- the sewer -- the wastewater
16 would have to travel ten foot to get to that pipe, to get
17 to the inside water pipe.

18 Mr. Comley asked me if four foot would be
19 satisfactory for me. I answered no because I feel that
20 the service lines are just as important to any water
21 system, any water or sewer system as the mains. Without
22 service lines, mains can do nothing.

23 For that reason, I would -- for me to be
24 happy with that installation, I would like to see sleeving
25 over that service line, which has been where the blue line

1 has been added to it. That should have a sleeving over
2 it.

3 JUDGE STEARLEY: All right. Thank you,
4 Mr. Pugh. You may step down, but you will not be finally
5 excused just in case the Commissioners would wish to
6 recall you.

7 And I believe that brings us to Staff's
8 witness, Mr. Merciel.

9 MS. HEINTZ: Do you need copies of
10 Mr. Merciel's testimony or do you have copies?

11 JUDGE STEARLEY: I do not. I've got a
12 copy. And I believe Mr. Merciel's surrebuttal testimony
13 would be marked as Exhibit 118.

14 MS. HEINTZ: Excuse me. I have rebuttal
15 and surrebuttal, so let's mark the rebuttal as 118.

16 JUDGE STEARLEY: I'm sorry. I skipped over
17 that.

18 MR. COMLEY: I apologize. I wasn't sure
19 that he had rebuttal testimony in this case.

20 MS. HEINTZ: He did. Do you need a copy of
21 that?

22 MS. BAKER: Are you talking about rebuttal
23 I this instant?

24 JUDGE STEARLEY: You know, that's true.
25 I've only got surrebuttal testimony.

1 MR. MERCIEL: That was earlier.

2 MS. HEINTZ: I'm sorry.

3 MR. COMLEY: I believe his rebuttal's
4 already been filed in the earlier case.

5 MS. HEINTZ: It has. We should mark his
6 surrebuttal as 118 since that's all he has.

7 (EXHIBIT NO. 118 WAS MARKED FOR
8 IDENTIFICATION BY THE REPORTER.)

9 JUDGE STEARLEY: Mr. Merciel, I will swear
10 you in.

11 (Witness sworn.)

12 JUDGE STEARLEY: Thank you, Mr. Merciel.
13 You may be seated. You may proceed, Ms. Heintz.

14 JAMES A. MERCIEL, JUNIOR testified as follows:

15 DIRECT EXAMINATION BY MS. HEINTZ:

16 Q. Would you please state your name and spell
17 it for the record.

18 A. James A. Merciel, Junior. Merciel is
19 M-e-r-c-i-e-l.

20 Q. And by whom are you employed and in what
21 capacity?

22 A. I'm employed at the Public Service
23 Commission in the water and sewer department. I'm
24 assistant manager, engineering.

25 Q. Do you have any corrections that you would

1 like to make to your surrebuttal testimony?

2 A. No, I don't.

3 Q. If I asked you the same questions today,
4 would your answers be substantially the same?

5 A. Yes.

6 MS. HEINTZ: I have no further questions,
7 and I tender the witness for cross.

8 JUDGE STEARLEY: Okay. Do you wish to go
9 ahead and offer the witness?

10 MS. HEINTZ: I will offer 118 at this time.

11 JUDGE STEARLEY: Any objections to
12 Exhibit 118?

13 (No response.)

14 JUDGE STEARLEY: Hearing none, it shall be
15 received and admitted into evidence.

16 (EXHIBIT NO. 118 WAS RECEIVED INTO
17 EVIDENCE.)

18 JUDGE STEARLEY: And we'll begin
19 cross-examination with Complainants, beginning with
20 Ms. Orler.

21 MS. ORLER: Thank you, your Honor.

22 CROSS-EXAMINATION BY MS. ORLER:

23 Q. Mr. Merciel --

24 A. Yes.

25 Q. -- good afternoon.

1 A. Good afternoon.

2 Q. Would you agree that a great deal of the
3 testimony both today and in the rebuttals and surrebuttals
4 was centered around proper terminology of these lines that
5 attach to the main line in the interior of the island,
6 running under the street and attaching to a service
7 connection?

8 A. If I understand your question correctly, I
9 think there are some terminology issues, shall we say,
10 yes.

11 Q. Based on your experience with the Public
12 Service Commission, are there other terminologies -- we've
13 tried to list some today. So we can try to narrow this
14 down so we are all talking about the same line, are there
15 other terminologies that you're aware of that have been
16 used in this case that we need to be aware of?

17 A. I don't think there are other
18 terminologies. I'm not sure everything's been used
19 consistently from what I've heard this morning, or at
20 least in the manner that I use the terms.

21 Q. In your professional opinion, do you feel
22 that any of the Complainants' either questions or
23 testimonies were addressing the actual residential private
24 lines that connect to a residence?

25 MR. COMLEY: Your Honor, I would object to

1 asking this witness to testify about what other witnesses
2 may have meant in their testimony.

3 JUDGE STEARLEY: That objection will be
4 sustained.

5 BY MS. ORLER:

6 Q. Using my testimony, for example, in your
7 professional opinion, at any time that I might have
8 mentioned service lines, do you think that I was referring
9 to a line connecting from my residence to a service
10 connection or from a service connection to my residence?

11 MS. HEINTZ: Your Honor, I will object that
12 that question calls for speculation.

13 JUDGE STEARLEY: It's the same objection.
14 It does call for speculation. Mr. Merciel can't get
15 inside your mind, Ms. Orler. It will be sustained.

16 MS. ORLER: You're fortunate, sir.

17 BY MS. ORLER:

18 Q. Mr. Merciel, in your testimony on page 3,
19 lines 11 through 17, you say that you disagree that there
20 are any such requirements that apply to the Big Island
21 area with regards to a ten-foot separation between the
22 service lines and service sewers. Can you be more
23 specific with regards to that?

24 A. Well, I'm not sure I can be more specific
25 than what the answer says, but I am referring to formal

1 requirements, such as county plumbing codes, subdivision
2 restrictions, tariff rules the Commission has approved,
3 you know, formal rules that are in place, and I don't know
4 of any.

5 Q. Okay. Now, we are talking about the
6 lines -- I just want to clarify. When you're talking
7 about rules and regulations that are in force for this,
8 we're talking about the lines that attach from the main
9 service line going under the road to the service
10 connection; is that correct?

11 A. Okay. Yes.

12 Q. Okay. Now, having said that and you talked
13 about subdivision rules, if the Big Island --
14 hypothetically, if the Big Island Homeowners Association
15 amended covenants and restrictions said that Folsom Ridge
16 warranted the correct installation of the water and sewer
17 system and for any defects found with the workmanship or
18 installation of that system Folsom Ridge would at its sole
19 expense pay for the cost to repair that system, would that
20 be, in your opinion, one of those subdivision rules or
21 regulations that would be enforceable to this?

22 A. That is a subdivision rule or rule of the
23 restriction, but it's not a specification.

24 Q. All right. But since that governs -- that
25 subdivision rule does govern the water and sewer utility,

1 it would address any corrections that might be necessary
2 for the installation of the system not meeting special
3 requirements as stated in this -- in this subdivision
4 ruling?

5 A. Special requirements, I'm not sure what you
6 mean by that.

7 Q. I believe the terminology of the
8 subdivision ruling states that the installation of the
9 system must meet all applicable codes and regulations.

10 A. Okay. Yes. I mean, that's what I'm
11 getting at. I don't know of any codes or regulations that
12 are applicable. Where you're asking about the statement
13 about Folsom Ridge making any corrections, I agree, that
14 is a rule, and it may well be there, but the question is
15 what -- what regulation are we talking about enforcing?

16 Q. Okay. So where the settlement agreement is
17 concerned and the water line replacement project that we
18 discussed in detail this morning, if the terms and
19 conditions of the settlement agreement were not met as per
20 the rules and regulations, then would the subdivision rule
21 come into play?

22 MR. COMLEY: Objection, your Honor. I
23 think we're asking Mr. Merciel to interpret very
24 complicated legal documents, and this is beyond his scope
25 of experience and expertise.

1 JUDGE STEARLEY: I will sustain the
2 objection.

3 BY MS. ORLER:

4 Q. As a -- as a schedule -- as exhibit -- as a
5 schedule that I provided that has been entered as an
6 exhibit here this morning, and I believe that is Exhibit
7 No. --

8 MS. ORLER: May I approach Public Counsel,
9 your Honor?

10 JUDGE STEARLEY: Yes, you may.

11 MS. ORLER: Thank you.

12 BY MS. ORLER:

13 Q. This is Exhibit 116. I'll show you a copy,
14 Mr. Merciel.

15 A. Okay.

16 Q. The front page, and if you could look very
17 specifically here. I'll let you look it over.

18 A. Okay.

19 MS. HEINTZ: Ms. Orler, if you'd like to
20 give my copy to Mr. Merciel, then you can both have one.

21 MS. ORLER: Thanks.

22 BY MS. ORLER:

23 Q. Would you please refer to the, I guess the
24 third paragraph right above Mr. Atkinson's signature,
25 please.

1 A. Okay.

2 Q. All right. Based on our previous
3 discussion with regards to regulations, would you
4 interpret the paragraph that you just read discussing the
5 lines of many homes under the roadway connecting to this
6 system being included as a part of the water distribution
7 system and subject to the separation of water and sewer
8 line construction policy, would this then conform to your
9 understanding of the regulation that we just discussed?

10 A. Well, what this is saying, and it's a --
11 it's from DNR. It's saying that the, what I call service
12 connections and what I think we've called service
13 connections, they consider that part of the distribution
14 system, so -- and subject to the separation. It
15 specifically says that.

16 Q. And subject by the titlement (sic) of the
17 document, would you also agree, then subject to the water
18 line replacement project as well?

19 A. Now, where -- I lost you on that part.

20 Q. The title of the document says for water
21 line replacement.

22 A. Okay. All right. Okay.

23 Q. And then if you'll notice under brief
24 description, if you will read to determine what this is
25 describing, what type of a project, please.

1 MS. HEINTZ: Your Honor, I'm going to
2 object to this use of the document. The document has been
3 entered as an exhibit. It can speak for itself. And I
4 don't think this is appropriate use of Mr. Merciel's
5 testimony.

6 JUDGE STEARLEY: The document does speak
7 for itself. Ms. Orler's asked him to read a particular
8 paragraph. I'll wait to see what her question may be
9 regarding that, and you can raise any appropriate
10 objections at that time.

11 THE WITNESS: Okay. You want me to read
12 the brief description?

13 JUDGE STEARLEY: You don't need to read it
14 out loud. I think she just wanted for you to read it
15 prior to her asking the question.

16 THE WITNESS: All right. Okay. Well --

17 JUDGE STEARLEY: So do you have a question,
18 Ms. Orler?

19 MS. ORLER: Yes, I did.

20 BY MS. ORLER:

21 Q. I would like to know, in your opinion, if
22 this would then be a regulation that would govern the
23 correct installation of a ten-foot separation of the lines
24 coming underneath the road as per the settlement agreement
25 slash water line replacement?

1 MS. HEINTZ: I object. Mr. Merciel is not
2 competent to testify to the terms of the settlement
3 agreement. He also can't make a legal conclusion.

4 JUDGE STEARLEY: The question needs to be
5 confined. I don't see anything in this document
6 referencing a settlement agreement. We don't know that
7 there's any relation between this document and a
8 settlement agreement. You can ask Mr. Merciel his opinion
9 regarding this paragraph. However, he is not a DNR
10 person, he's not an expert in that. It would simply be
11 his opinion based upon his own personal knowledge.

12 And, Mr. Merciel, if you don't have an
13 opinion regarding that or do not feel competent to offer
14 one, you can so state.

15 THE WITNESS: Okay. I believe I can answer
16 the question. Can you repeat the question? I forgot
17 exactly what it was.

18 BY MS. ORLER:

19 Q. The title of the document is water line
20 replacement, a portion of the title.

21 A. Right.

22 Q. If you were to read the brief description
23 and then the more specific paragraph following that, in
24 your professional opinion, should the water lines
25 attaching to the main running underneath the road and

1 attaching to a service connection have been separated by
2 the regulation of ten feet for regulatory purposes?

3 A. Okay.

4 MR. COMLEY: Again, I'm going to object.
5 There has been no regulation proposed that indicates there
6 has to be a ten-foot separation. There is no regulation
7 that has been entered into this case that indicates there
8 has to be a ten-foot separation. That assumes facts not
9 in evidence.

10 JUDGE STEARLEY: That does assume facts not
11 in evidence. Again, though, Mr. Merciel can offer his
12 personal opinion regarding this particular letter.
13 However, the Commission will -- as I've noted, he's not
14 from DNR and not an expert in this regard, and there is no
15 particular regulations cited. It is, in fact, a letter
16 referencing the opinion of the author that will be taken
17 and considered for what weight it should be given. But
18 you can offer your opinion, Mr. Merciel.

19 THE WITNESS: Okay. Actually, what you
20 just said was going to be part of my answer. I don't
21 think it's regulation. This is -- this is a letter. I
22 don't believe it's in DNR's regulations. It does -- this
23 is about replacement of water mains, and the letter says
24 that if what I call a service connection serves more than
25 one house, they consider that part of the distribution

1 system. And I would presume -- I would presume that would
2 be included. I think that's the answer to your question.

3 BY MS. ORLER:

4 Q. Yes. Thank you.

5 A. That some of them, if it serves more than
6 one house. Now, I will say that I distinguish -- well, I
7 believe a service connection is a service connection.
8 There are service connections that serve one house. There
9 are companies with approved rules that have service
10 connections that serve two houses.

11 And for my purposes, in the work that I do,
12 I don't distinguish, as this letter appears to do. So I
13 kind of find myself a little bit at odds that is part of
14 the distribution system. I still consider that a service
15 connection for the purpose of serving either one or two
16 customers.

17 Q. But not a private service connection?

18 A. It would not be private in either case. In
19 most situations with companies that I deal with, most, not
20 all but most, that would be owned by the utility.

21 Q. So if the Public Service Commission were
22 regulating this utility, would you want to ensure that the
23 very lines that we have been discussing were properly
24 separated?

25 A. Well, I would hope to, yes. Yes.

1 Q. And why?

2 A. Why? Because of everything that's been
3 discussed here, the health risk.

4 Q. Do you think the health risks are greater
5 because of the ongoing development on Big Island with the
6 heavy equipment, the trenching that's being done, et
7 cetera?

8 A. The answer is yes, construction does -- it
9 is conducive to main breaks and sewer breaks, absolutely.

10 Q. Thank you. Would it be your professional
11 opinion from reading this document that DNR was attempting
12 to enforce a separation of these lines?

13 MR. COMLEY: Objection. Again, we're
14 trying to find out what DNR has attempted to do through a
15 witness from the PSC. I would object on grounds that
16 Mr. Merciel is not qualified to answer for DNR.

17 JUDGE STEARLEY: I will sustain the
18 objection. It calls for speculation.

19 MS. ORLER: May I rephrase?

20 JUDGE STEARLEY: You can certainly ask a
21 different question, Ms. Orler.

22 BY MS. ORLER:

23 Q. If you were regulating this system and if
24 this system were being regulated by the Public Service
25 Commission and this document were presented to you with

1 regards to these lines, would you want to ensure that
2 these lines were properly separated?

3 A. If -- if we got to the point that this was
4 going to be a regulated company, then yes, I would want
5 this utility to evaluate what's out there, evaluate what's
6 out there, you know, how many service lines are -- service
7 connections, I'm sorry, how many -- you know, how many
8 should be corrected, you know, are there really some
9 problems, if they -- of course, we don't have a standard
10 established whether it's ten feet or something else, and I
11 said that in my testimony.

12 You know, there are -- the bottom line, you
13 want to assure as best you can that there isn't a health
14 risk. You know, if one leaks, is there going to be
15 contamination with the other. That's what we're trying to
16 get to. And whatever utility it is, whether it's
17 regulated or not, I think needs to take a look at this.
18 If you can do some corrections that are beneficial, then
19 yes, it should be done.

20 Maybe some of them can't be separated and
21 might have to live with what's there. What Mr. Pugh said
22 about sleeving, that might be the answer on some of them.

23 Q. So in other words --

24 A. I was just going to say, I don't think we
25 know what's out there. I think this is a legitimate

1 concern of the homeowners.

2 Q. So if the possible -- if the -- if it's
3 just not possible and it doesn't exist to separate those
4 by a proper distance, then you would suggest an
5 alternative measure be taken?

6 A. Yes.

7 Q. Thank you. Now, with regards to the system
8 as a whole, can the main line operate independently of the
9 service lines?

10 A. Yes.

11 Q. If there were no service lines, would there
12 be a need for a main line?

13 A. You're talking about having no customers,
14 and there would be no need there. But service lines serve
15 individual customers or, as we said, maybe two customers,
16 and you can -- you can do something to one and all the
17 rest of the customers still have service by use of the
18 mains in sewers on the sewer system.

19 Q. Having said that --

20 A. That's the difference that I see.

21 Q. Okay. Having said that, if there is
22 contamination with one of these water distribution lines
23 going underneath the road, does that contamination affect
24 the entire system? Could it affect the entire system?

25 A. The answer is yes, that risk goes all the

1 way into your house, up to your faucet and your drain and
2 your sink. There's a risk of contamination there, too.

3 Q. What would be an alternative method or how
4 would you reduce that risk of contamination?

5 A. With respect to?

6 Q. With respect to the line that is -- that's
7 going underneath the road.

8 A. Well, I think we've talked about that.
9 There's vertical separation, horizontal separation,
10 separate shelf in the same trench, sleeving, encasement in
11 maybe concrete. There are some things that can be done.

12 Q. Would a shutoff valve also be an
13 alternative method?

14 A. Are you talking about a permanent turn off
15 the customer?

16 Q. A valve to isolate that contamination to
17 turn off the flow of distribution to and from?

18 A. Well, that's not a -- that's not a
19 permanent fix to the contamination risk.

20 Q. No, but would it be a helpful alternative?

21 A. For the risk? No, I don't -- maybe I'm
22 misunderstanding.

23 Q. Let me rephrase.

24 A. The valve -- the valve would normally be
25 open if you have a customer there.

1 Q. Correct.

2 A. And the existence of a valve doesn't
3 prevent any contamination.

4 Q. So if contamination did occur and the valve
5 was open, if you close the contamination, that would not
6 confine the contamination?

7 A. After the fact. You know, once you
8 discover there's a leak, yeah, you could -- somebody could
9 turn it off and prevent further contamination.

10 Q. Right. So it would reduce, then, or
11 restrict the contamination?

12 A. But you've got a customer out of service
13 then, too.

14 Q. Correct.

15 A. It doesn't fix the problem.

16 Q. No, but you have at least reduced or
17 confined the contamination, that was my question?

18 A. Yes, on a temporary basis.

19 Q. Yes. Okay. Mr. Merciel, why have you
20 recommended in your testimony to the Commission not to
21 place any condition with respect to the service lines or
22 sewer service repair or replacement upon the approval and
23 transfer of the subject utility assets?

24 A. Well, because first I'm not sure that the
25 Commission even has to -- has to approve this transfer.

1 It's -- it's questionable. I don't know if they do or
2 not.

3 But beyond that, this is -- this is
4 transferring this utility to a -- it's transferring the
5 system to a utility that is not subject to the
6 Commission's jurisdiction, and I think the question really
7 is, is this a reasonable transfer? And I -- I don't -- I
8 just don't think the service lines and the service
9 connections is an issue that the Commission -- well, I
10 don't recommend that the Commission try to enforce any of
11 this.

12 Q. If there is issue, though, with the proper
13 separation of the lines as we have just discussed and
14 you're not recommending to the Commission to place any
15 condition on a transfer of utility assets, are you then
16 recommending to transfer the utility assets with the
17 present issues that exist?

18 A. Well, understand I'm not saying that
19 there's not an issue. I'm just saying I don't believe
20 that it's an issue that the Commission has to deal with
21 it. But your question, if this does transfer to -- you
22 know, the water utility is there. As I said before, I
23 think whatever utility is finally in place does need to
24 look at this issue.

25 Q. So you're suggesting that with the transfer

1 of assets goes the transfer of any issues that might
2 exist?

3 MS. HEINTZ: I object. This question has
4 been asked and answered. It's also argumentative.

5 JUDGE STEARLEY: I will sustain.

6 BY MS. ORLER:

7 Q. So you're not suggesting that any issues
8 that might exist with this present system be issued -- be
9 addressed and resolved prior to a transfer of any utility
10 assets?

11 MS. HEINTZ: Your Honor, I have the same
12 objection.

13 JUDGE STEARLEY: It's the same question,
14 and I will sustain the objection.

15 BY MS. ORLER:

16 Q. Do you feel that if there are issues
17 regarding the lines that we have been discussing today and
18 a proper separation and the utility assets are approved
19 for transfer to the 393 companies, for the lines that we
20 have discussed today that might not be separated by a
21 proper distance of ten feet --

22 MS. HEINTZ: Your Honor, I would object to
23 saying a proper distance of ten feet should be a part of
24 the transfer. We have not established that in evidence.

25 MS. ORLER: Let me rephrase that.

1 BY MS. ORLER:

2 Q. For any issues that may exist with the
3 lines that we've discussed today and an improper
4 separation that could produce a health risk, the 393
5 companies have revised and edited their bylaws to deny
6 service to those connections.

7 MS. HEINTZ: Your Honor, I object to that.
8 That's testimony, and I don't hear a question in there
9 anywhere.

10 MR. COMLEY: And I think the testimony
11 concerning that in her own testimony was sustained. The
12 objections were sustained.

13 JUDGE STEARLEY: Are you getting to a
14 question there, Ms. Orler?

15 BY MS. ORLER:

16 Q. Yes. I'd like to know if the issue
17 regarding possible contamination because of an improper
18 separation of the lines that we've been discussing is not
19 addressed or resolved, and the utility assets are
20 transferred to the 393 companies and the 393 companies
21 refuse service to those individuals, do you -- do you feel
22 that there is a necessity in addressing that issue?

23 MS. HEINTZ: Your Honor, that question
24 again has been asked and answered, and I also believe it
25 is very vague, very confusing, cumulative and also

1 argumentative.

2 JUDGE STEARLEY: I will sustain.

3 BY MS. ORLER:

4 Q. On page 5, lines 19 and 20 of your
5 surrebuttal testimony, you state, it's not clear as to who
6 is ultimately responsible for the installations. Now, are
7 you talking about the installations once again of the
8 lines going underneath the street?

9 A. Well, I'm really talking about the whole
10 pipeline. I don't think it's been determined who owns
11 what and who's responsible for what. At least I haven't
12 seen it. As I said --

13 Q. Can you be more specific to who owns what
14 and --

15 A. Service connections versus service lines.
16 That meaning in the context of rules that are approved for
17 most of our regulated utilities, again not all but most,
18 the utility owns the service connection that's from the
19 main that's part of the distribution system out in the
20 street to the property line, and that's the service
21 connection, and from there on in it's the service line
22 belonging to the customer.

23 That distinction there is established by an
24 approved rule. I don't think that exists here. And it is
25 my understanding that Folsom Ridge installed -- I thought

1 they installed the whole pipeline to the house. I could
2 be wrong about that. And I thought -- I did think we'd
3 been talking about what I call service connections and
4 service lines.

5 Q. Okay.

6 A. So that's why I say, I don't know who's
7 responsible. I know, you know, Folsom Ridge installed
8 some or all of it. I don't know. I don't know who all
9 did what or -- well, that's why I said here, I'm not sure
10 who's ultimately responsible.

11 Q. If after almost two years before the Public
12 Service Commission and these issues being before the
13 Public Service Commission and it's still not clear, are
14 you still advocating a transfer of the utility assets to
15 the 393 companies?

16 A. Yes, I am. I'm advocating that this --
17 this system needs to operate -- be operated by a
18 legitimate utility. We don't have that now. We have a
19 homeowner association that's owned by the developer and
20 controlled by the developer. It -- it's not -- it's not
21 regulated by the Commission. There are no tariffs in
22 place. The homeowners don't have control. To me, that's
23 the issue. We need a legitimate utility here, and that's
24 what I'm trying to get to.

25 There are some issues like this. There's a

1 water tank needs to be put up. There are issues about
2 what kind of rules are going to be in place. You have
3 these service lines, rules on service lines. There's a
4 lot of things that have to be done. But the big issue is
5 who's going to be the utility, and that's what I've been
6 trying to focus on, and it's taken all this time to do
7 that.

8 Q. Would you -- are you stating in your
9 testimony today that Folsom Ridge is not a legitimately
10 created legal entity?

11 MR. COMLEY: Objection. I'll object on
12 grounds that that is a conclusion of law, and that is the
13 issue the Commission is ultimately going to need to
14 decide. I don't think Mr. Merciel's qualified really
15 pursuant to all the legal arguments that have been made in
16 advance of this testimony --

17 MS. ORLER: Your Honor, he --

18 MR. COMLEY: -- to make a judgment about
19 that. Thank you.

20 MS. ORLER: He just stated that in his
21 testimony, that today as we speak there is no legitimate
22 entity.

23 MR. COMLEY: Then there's no need for the
24 question. It's been asked and answered.

25 JUDGE STEARLEY: Both objections are

1 correct. If the question in the same context, which I'm
2 not sure it was, has been asked and answered, it will be
3 sustained.

4 As far as Mr. Merciel rendering a legal
5 conclusion, which is one of the primary issues in this
6 case for the Commission to decide, that is not for
7 Mr. Merciel to decide, and nor is he qualified to offer an
8 opinion on that. So the objections are sustained.

9 MS. ORLER: He can offer opinion if he's
10 going to be making a recommendation to the Commission; is
11 that not correct?

12 JUDGE STEARLEY: Not with regard to the
13 legal issue as to whether or not this Commission has
14 jurisdiction on this case, whether or not this is a
15 legitimate operation.

16 MS. ORLER: He can offer his professional
17 opinion.

18 MS. HEINTZ: But not a legal conclusion.

19 JUDGE STEARLEY: Which he has already
20 offered and it's been asked and answered and it appears in
21 his surrebuttal testimony, so there's no need to ask
22 further. It is, in fact, on page 6, lines 13 through 14.

23 BY MS. ORLER:

24 Q. Mr. Merciel, in your testimony on line --
25 excuse me -- on page 6, lines 1 and 2, you stated that, I

1 don't believe that a condition placed by the Commission
2 will ultimately guarantee that Folsom Ridge will pay for
3 the relocations. Why is that?

4 A. If we assume that the Commission placed
5 some condition either on the transfer or on somebody
6 getting a certificate to operate this utility, I think the
7 directive would be upon the utility to address the issue,
8 as opposed to some -- some kind of a judgment against, you
9 know, regarding liability.

10 Q. If the Commission were regulating this
11 utility, would the Commission look at the settlement
12 agreement between Folsom Ridge, DNR and the Attorney
13 General's Office that was mandated to correct an incorrect
14 installation?

15 A. I don't know if the Commission would or
16 not. I don't know.

17 Q. Would you make a recommendation in your
18 professional position with regards to that?

19 MS. HEINTZ: I object to that question. I
20 don't think Mr. Merciel would be called upon to make such
21 a recommendation if Ms. Orler's hypothetical were the
22 case.

23 JUDGE STEARLEY: I believe Mr. Merciel can
24 answer that question from his own personal opinion.

25 THE WITNESS: Okay. Well, my answer is the

1 same as what I just said. I think anything that I might
2 recommend would have to do with the utility addressing the
3 issue, not whose liability it is. I would be looking at
4 it from an operation standpoint. It's certainly good
5 practice to address this issue, but, you know, I
6 believe -- I believe, you know, the complaint against
7 Folsom Ridge, I just -- I can't carry it that far. That's
8 liability issue, more of a legal issue, and I can't get
9 into that.

10 BY MS. ORLER:

11 Q. Okay. So if it's a liability issue and you
12 are supporting or making a recommendation to the
13 Commission for the transfer of utility assets to the 393
14 companies, are you then making the recommendation also
15 that the liability should be transferred to the 393
16 companies?

17 MS. HEINTZ: I object. That calls for a
18 legal conclusion.

19 JUDGE STEARLEY: That will be sustained.

20 BY MS. ORLER:

21 Q. Do you think that there are liabilities
22 that exist with this system today, Mr. Merciel?

23 MS. HEINTZ: Your Honor, I have the same
24 objection.

25 JUDGE STEARLEY: You're talking about legal

1 liabilities. The objection will be sustained.

2 BY MS. ORLER:

3 Q. Are there health liabilities and risks that
4 exist with this system today, Mr. Merciel?

5 A. There are health liabilities and risks with
6 every utility system, water and sewer. That's -- that's
7 why they have to be competently operated.

8 Q. And as you are familiar with the Big Island
9 system, would you say that the risks are greater there?

10 A. Not really. No, I wouldn't.

11 Q. And so you would be comfortable, then, in
12 recommending a transfer of utility assets with the health
13 risk to the 393 companies?

14 MS. HEINTZ: Your Honor, I object to the
15 argumentative nature of that question. I also believe it
16 has been asked and answered.

17 JUDGE STEARLEY: It has, and it's assuming
18 facts not in evidence. I will sustain.

19 BY MS. ORLER:

20 Q. Mr. Merciel, have you read my formal
21 complaint?

22 A. Yes.

23 Q. And are you familiar both with what was
24 submitted as an attachment in my formal complaint and
25 what's been submitted as an exhibit in this hearing with

1 regards to the amended and restated covenants and
2 conditions of the Big Island Homeowners Association?

3 A. Well, I've read them before.

4 MR. COMLEY: And, your Honor, I think we're
5 going way beyond the discussion of Mr. Merciel in his
6 testimony and far beyond the purpose of the testimony that
7 we've offered in this case. The issues concerning any
8 covenants and restrictions and those kinds of things are
9 well beyond what Mr. Merciel has done in his surrebuttal
10 testimony.

11 JUDGE STEARLEY: It does exceed the scope,
12 and I will sustain.

13 BY MS. ORLER:

14 Q. You said that you're familiar with my
15 formal complaint. Do you recall part of my request for
16 relief to the Commission in my formal complaint was to
17 prevent the transfer of liabilities associated with the
18 water and sewer system to the residents on Big Island?

19 A. I recall you said that, yes.

20 Q. Do you also recall that I asked for a
21 temporary injunction to keep that from happening?

22 A. Yes, I do.

23 Q. You've also stated in your testimony on
24 lines 6 -- excuse me -- page 6, lines 11 and 12, the
25 entire scope of this case goes far beyond the service

1 lines. Can you be more specific with regards to that
2 statement, please?

3 MS. HEINTZ: Your Honor, I object. The
4 scope of the case may go far beyond the service lines, but
5 this hearing does not. I don't think that this is a
6 proper line of questioning.

7 MS. ORLER: But the entirety of his
8 testimony was entered as an exhibit into this hearing
9 today and the case.

10 JUDGE STEARLEY: You can ask Mr. Merciel to
11 clarify what he's referring to, but beyond that you cannot
12 ask any further questions because they don't pertain to
13 the scope of this hearing.

14 BY MS. ORLER:

15 Q. What were you referring to in your
16 statement on lines -- page 6, lines 11 and 12, about the
17 entire scope of this case going far beyond the service
18 lines?

19 A. That refers to the ultimate question, who
20 is going to be the utility here? That's -- that's the big
21 question. Is it going to be a regulated utility? Is it
22 going to be these 339s? The establishment of a utility is
23 the big picture. There are some little issues that go
24 with it. Many -- actually, most of those issues are --
25 exist with other utilities. You know, this is not that

1 unusual in that situation.

2 Q. Mr. Merciel, since your testimony stated
3 that you are not making any recommendations to the
4 Commission to place any restrictions on Folsom Ridge with
5 regards to the lines that we've been discussing, can you
6 provide to the Commission today answers to substantiate
7 are there 393s in existence that have been implemented
8 into an existing subdivision that consists of new
9 development and existing residents?

10 MS. HEINTZ: Your Honor, I object to this.
11 This is irrelevant.

12 JUDGE STEARLEY: It is irrelevant to the
13 scope of this ancillary hearing, and I will sustain.

14 BY MS. ORLER:

15 Q. Why do you feel that we do not have an
16 entity operating and owning this water and sewer utility
17 today that is legitimate?

18 MS. HEINTZ: Your Honor, again, that
19 question has been, A, asked and answered, and B, had
20 objections sustained to it. I have the same objections
21 that Mr. Merciel cannot give a legal conclusion.

22 JUDGE STEARLEY: That is sustained.

23 MS. ORLER: Can he offer his opinion with
24 regards to specifically why he doesn't feel we have a
25 legitimately operated and owned utility today?

1 JUDGE STEARLEY: Was that a question or --

2 MS. ORLER: Yes. Can he offer his
3 professional opinion as to why he feels the water and
4 sewer utility on Big Island is not --

5 JUDGE STEARLEY: No, he cannot.

6 MS. ORLER: Okay. That's all that I have.

7 JUDGE STEARLEY: All right.

8 Cross-examination, Mr. Pugh? Do you have any questions
9 for Mr. Merciel?

10 MR. PUGH: Just a couple.

11 CROSS-EXAMINATION BY MR. PUGH:

12 Q. Mr. Merciel, you stated -- you stated there
13 are known issues with the utility on Big Island; is that
14 correct?

15 A. Well, this is one. I may have said that at
16 some point.

17 Q. Do you feel that the PSC can help resolve
18 these issues?

19 A. Well, I think -- I think the best way to
20 resolve many of the issues is to get a good established
21 utility in place here that can address these issues.
22 Again, it can be the 393s. It can be a regulated utility.
23 We need someone who's in a position to operate these
24 systems.

25 Q. Do you feel that -- excuse me. Do you feel

1 that a new 393 company could do -- could come closer to
2 resolving these issues than the PSC?

3 A. Well, I don't think there's a comparison
4 between the 393s and the PSC. The PSC does not operate
5 utility systems. The PSC is not going to be the utility.
6 The 393 would be the utility, have ownership of these
7 facilities and be in a position to address problems and
8 deal with the customers under their rules.

9 Q. Maybe I should rephrase that. Do you think
10 a -- do you think a regulated certified company, regulated
11 by the Public Service Commission, could solve -- resolve
12 these problems better than a 393?

13 A. It's too general to say better. I think
14 there -- you could grant a certificate to anybody, but
15 that doesn't mean you're going to get a good company. If
16 you had a good utility, they could certainly do the job.
17 I'm not going to try to compare just generally a regulated
18 utility to the 393. I don't think you can do that.

19 Q. Okay. Change courses here a little bit. I
20 still have one -- one thing, Ms. Orlor kind of went into
21 it a little bit. In your testimony -- in your testimony,
22 did you disagree with me that it takes a service line and
23 a main line to provide service to a customer? I think
24 that's in your testimony.

25 A. Okay. I don't remember saying quite what

1 you just said there.

2 Q. Ms. Orlor --

3 A. I think I did.

4 Q. I think somewhere --

5 A. I did disagree with you on something.

6 Q. That was it, I think.

7 A. That's not what I said, though.

8 Q. Oh, okay.

9 A. Page 3, line 8, is that what you're looking

10 for maybe?

11 Q. Yeah, I believe that's what I'm talking

12 about.

13 A. If the question is if I disagree with what

14 you said in your testimony, the answer is yes, I disagreed

15 with you.

16 Q. That's not what I had in mind. I might be

17 confused on this. I thought it was in your testimony

18 where I had made a statement that it takes both service

19 lines and mains to have a functional whole sewer or water

20 system, and I think you disagreed with that.

21 A. Well, there's something about that in

22 there.

23 Q. I don't know where it is, but --

24 A. But that was -- I think that was part of

25 the discussion I had when Ms. Orlor was doing the

1 questioning.

2 Q. Yes.

3 A. You can have a water main that's operating
4 and you can disconnect the water service line, you still
5 have water main that operates.

6 Q. Yes, but if it has no place to go, if it
7 doesn't have a service line to --

8 A. The customers.

9 Q. -- to go to the customer, it's basically
10 useless, isn't it?

11 A. If you disconnect one service line, you
12 still have other customers left. You can disconnect half
13 the service line and the water main still operates.

14 Q. If you have one main and you have one
15 customer, you have to have a service line to service that
16 customer, don't you?

17 A. If the customer's going to get service, the
18 customer has to have the service line. The point is --
19 the point is what the customer is doing and what the
20 service line is doing does not directly affect other
21 customers and how the water main is operated. If you have
22 one service line and 99 other customers, then those other
23 99 customers still have service if the one customer
24 disconnects or there's an interconnection, the health risk
25 is there. We've been through all that.

1 Q. She touched on it, I know, but I -- I see
2 your point you're trying to make. I think you and I are
3 kind of looking at it from two different -- kind of an
4 apple and orange thing.

5 MR. PUGH: That's all the questions that I
6 have. Thank you.

7 JUDGE STEARLEY: Thank you, Mr. Pugh.
8 Ms. Fortney, you indicated you didn't have any questions
9 for Mr. Crowder. Do you have any for Mr. Merciel?

10 MS. FORTNEY: No, your Honor.

11 JUDGE STEARLEY: Thank you, Ms. Fortney.
12 Cross-examination, Office of Public Counsel?

13 MS. BAKER: I have no questions.

14 JUDGE STEARLEY: Chapter 393 companies?

15 MS. HOLSTEAD: Yes, your Honor.

16 CROSS-EXAMINATION BY MS. HOLSTEAD:

17 Q. Mr. Merciel, have you made recommendations
18 to the 393 companies that they revise their bylaws to
19 include regulations on future installations of individual
20 service lines?

21 A. I believe we have. I'm not sure if we've
22 done it on the record, but certainly informally we had
23 that recommendation, yes.

24 Q. And do you have any reason to believe that
25 they will accept your recommendation?

1 A. Well, I know there have been some revisions
2 to the bylaws. It appears to me that the 393s are working
3 toward some reasonable regulations.

4 MS. HOLSTEAD: All right. Thank you.

5 JUDGE STEARLEY: Thank you, Ms. Holstead.
6 Cross-examination Folsom Ridge and the Association,
7 Mr. Comley.

8 CROSS-EXAMINATION BY MR. COMLEY:

9 Q. Mr. Merciel, if you could turn to page 4 of
10 your surrebuttal testimony, I'll be talking to you about
11 lines 2 through 5. You note there that neither you nor
12 anyone else on the PSC Staff has firsthand knowledge of
13 what is actually installed in the system beyond the
14 pictures and testimony that have been admitted in the
15 case, but as a result of this, the issue is not clear. Is
16 that a fair rendition of your testimony there?

17 A. Yes, it is.

18 Q. Mr. Merciel, what I wanted to ask you was,
19 has the Staff ever had a chance to inspect the
20 construction of a brand-new subdivision water or sewer
21 system?

22 A. Generally, we have before, yes. We've
23 looked at them.

24 Q. But it's not very common, is it?

25 A. Well, we're not -- we don't watch the whole

1 thing, right. We don't -- yeah. The answer is yes. We
2 don't -- many of them we don't see, and we certainly don't
3 see the entire system.

4 Q. Many times the first time that you have an
5 occasion to talk about the system integrity and that kind
6 of thing would be when someone arrives to acquire a
7 certificate; is that correct?

8 A. And it could even be an old system. System
9 might be 20 years old before we even get involved with it.

10 Q. And at that time, you would probably go and
11 do an onsite inspection and conduct some sort of an
12 evaluation of the system integrity?

13 A. Yes.

14 Q. Ms. Orler asked you questions concerning
15 main breaks because of pending construction in the area.
16 Would it be fair to say that even old systems have main
17 breaks that are caused by heavy equipment that may roll
18 over portions of lines?

19 A. Yes. It happens.

20 Q. And main breaks are something that are just
21 part of maintenance for a system no matter how well it's
22 constructed; would that be a correct statement?

23 A. That is correct.

24 Q. And there needs to be someone in place to
25 handle main break emergencies and to handle those

1 emergencies on a timely basis; wouldn't that be correct?

2 A. That would be correct.

3 Q. With respect to service line connections
4 that are on Big Island, you had mentioned that sleeving
5 may be an answer for some. I think that was part of your
6 testimony. Do you recall that?

7 A. I did say that, yes.

8 Q. Before any decision were to be made about
9 whether a sleeve should be added to either a service
10 connection line or a water main extension line, what would
11 be the first step for you?

12 A. Well, I think the first thing to do would
13 be to try to determine where these pipelines are, where
14 they're located, and, of course, a lot of it's buried.
15 You can't really see what's there in terms of couplings
16 or, you know, fittings, connections. Valves you can
17 usually see. Sometimes valves are close together.

18 Q. Would you rely on the engineering data from
19 periodic inspection of the work?

20 A. We would look at whatever's available,
21 either drawings on, you know, when it was built or the way
22 it's supposed to be build, what's in the field, if a --
23 maybe if a connection was recently made, either somebody
24 knows where it is or you can see where the ground has been
25 disturbed.

1 Q. Wouldn't you give a fair reading of the
2 evaluations done by the consulting engineer on the
3 project?

4 A. That would be a factor to use, yes.

5 Q. Would you also give a great deal of
6 deference to the way the DNR inspector reviewed and then
7 approved the project?

8 A. Yes.

9 Q. Would it also be fair to say that before
10 any kind of remedial action were taken, the PSC Staff
11 would expect to have a full evaluation by a qualified
12 engineer, such as yourself?

13 A. Yes. We would -- we might do it ourselves,
14 work with the company's engineer if they have one, yes.

15 Q. The decision on whether to re-excavate the
16 area would come after some very careful deliberative
17 thought with professionals involved in making the
18 decision; isn't that correct?

19 A. Absolutely, because it could be quite
20 possible in some cases.

21 Q. Is it conceivable that after looking at
22 that material and concluding that every precaution was
23 taken with respect to eliminating cross-contamination,
24 your recommendation would be that there's nothing we need
25 to do?

1 A. Well, we might. That could be a
2 recommendation. I mean, beyond that, that would be the
3 idea of looking at it. I don't know -- I don't know, you
4 know, in this case if we're talking generically -- well,
5 if we're talking generically, that could be -- you know,
6 that could be the recommendation.

7 Q. Certainly.

8 A. We just don't know.

9 Q. We do have the benefit in this case of a
10 professional engineer who had inspection duties on the
11 water main replacement project; isn't that correct?

12 A. That is correct.

13 Q. And we also had the benefit of a DNR
14 inspector who was dispatched there regularly to review the
15 work that was being done. We do have that in this case,
16 don't we?

17 A. Yes, as far as I know, we do.

18 Q. And there is -- to the best of your
19 knowledge, DNR did approve the water main replacement
20 project in accord with its design specifications?

21 A. As far as I know, DNR did.

22 Q. There were questions about the sources of
23 contamination to the water system. Would it be fair to
24 say that the risk of contamination between water and sewer
25 lines is reduced if both lines are under pressure?

1 A. Is the risk reduced?

2 Q. Yes.

3 A. No. No. In fact, it's probably increased.

4 Q. Because pressurized lines --

5 A. Well, the risk is sewage getting into the

6 water line, and if the water system is depressurized, that

7 allows contamination to come in.

8 Q. I see. So if there is a --

9 A. And if you have a pressurized sewer and it

10 has a leak, in fact, we're talking about vertical

11 separation with the sewer -- with the sewer being below

12 the water. If it's gravity sewer, it's probably not going

13 to surface. But if it's under pressure, it can surface

14 just like a water main break can.

15 Q. With respect to the pressure on the water

16 line, if it's pressurized, the chance of sewage seeping

17 in, doesn't the pressure on the water line keep that out?

18 A. Yes, it does.

19 Q. All right.

20 A. But the risk is when you lose pressure on

21 the water system, such as during a main break.

22 Q. So if there's a main break on both, then

23 you have the possibility of cross contamination?

24 A. Yeah. Or even just leaks, yeah.

25 Q. Regarding sources of contamination, say,

1 for instance, there is an illegal use of water in a home
2 connected to the pressurized water system or an illegal
3 device that allows backflow of some sort into the water
4 system. Would your testimony be that that also
5 constitutes a source of contamination for the whole
6 system?

7 A. It is a risk, yes, it is.

8 Q. Do you have examples of that?

9 A. Sprinkler systems. Well, it's not illegal.
10 You talked about illegal connections. But there are
11 legitimate things that you can do in your house that can
12 be a contamination risk, lawn sprinkler system being one
13 of them. Most utilities require what's called a backflow
14 prevention device on the water service line somewhere if
15 you have a sprinkler system. That prevents any
16 contamination you might have from getting back into the
17 system. It doesn't protect yourself, but it protects
18 other customers.

19 Q. That's normally a customer requirement; is
20 that correct?

21 A. It's required for the customer to do that,
22 yes.

23 Q. And that's not something utilities under
24 regulation would be expected to pay for; is that correct?

25 A. Well, right. The utilities don't pay for

1 it, but the utilities are required to make sure the
2 customers do it and they have to be tested periodically.
3 So the utilities have some work to do.

4 Q. If the customer would be uncooperative
5 about that, would that be a cause for disconnection of the
6 customer?

7 A. Yes, it is.

8 MS. BAKER: Your Honor, I'm going to object
9 about this. We're not dealing with a backflow prevention
10 situation in this. We're dealing with the blue flexible
11 piping.

12 MR. COMLEY: I think Mr. Merciel was
13 permitted to discuss other sources of contamination to the
14 water system and how contamination could occur. This was
15 just an example to bring up and how customers are expected
16 to handle situations like that.

17 JUDGE STEARLEY: All right. I will
18 overrule the objection.

19 BY MR. COMLEY:

20 Q. Mr. Merciel, have you had a chance to
21 inspect the system yourself? I can't remember if I asked
22 you this question earlier or not.

23 A. I'm not sure if you did or not. I haven't
24 inspected it. I have been to the area and drove around.
25 Didn't go into the wellhouse or anything like that.

1 Martin Hummel, who works in our department under my
2 supervision, I don't know how many times he's been there.
3 More than once.

4 Q. And he has reported to you?

5 A. Yes, he has, and he's seen more than I have
6 there.

7 Q. There was discussion about shutoff valves.
8 Do you know the extent to which shutoff valves, if there
9 are any residences that do not have shutoff valves in Big
10 Island? Do you know?

11 A. I don't know that.

12 MR. COMLEY: That's all I have.

13 JUDGE STEARLEY: Thank you, Mr. Comley.
14 There are no questions from the Bench. Any redirect from
15 the Staff?

16 MS. HEINTZ: No, thank you.

17 JUDGE STEARLEY: All right. Mr. Merciel,
18 you may step down. Thank you for your testimony. At this
19 time I will finally excuse you and all the witnesses to
20 this morning's hearing.

21 We'll take up a few housekeeping matters.
22 Regarding the filing of the late-filed Exhibit 110 that
23 we've identified by Ms. Orler, I'm going to leave it to
24 the parties to contact one another regarding the viewing
25 of all of those various documents for the certification.

1 I would direct that the late-filed exhibit be filed by
2 next Friday, April 6th, and any objections then to the
3 late filing should come in the following Monday, to be
4 April 9th.

5 I might ask for the transcripts to be
6 expedited. Kellene, are we going to have those by
7 Wednesday next week?

8 THE REPORTER: Yes.

9 JUDGE STEARLEY: So transcripts from this
10 proceeding should be available next Wednesday. I know our
11 beginning transcripts came in a few days later than
12 anticipated. They came in on the 27th. Is everyone still
13 on track with post-hearing briefs being filed April 13th?

14 MS. ORLER: Your Honor, could we request an
15 extension of time with regards to that fact that they came
16 in late?

17 JUDGE STEARLEY: Are there any objections
18 to that?

19 MR. COMLEY: No.

20 JUDGE STEARLEY: Well, they came in -- if
21 we go with the following Friday, April 20th for
22 post-hearing briefs. I believe I also directed that
23 parties are welcome to file Proposed Findings of Fact
24 Conclusions of Law.

25 This would put the Commission's decision

1 potentially toward the middle or end of the month of May.
2 Chapter 393, Ms. Holstead, I believe you said that you had
3 restructured your agreement to be for June on the
4 transfer; is that correct?

5 MS. HOLSTEAD: That's fine, your Honor. In
6 fact, the 393 has not yet signed the transfer agreement
7 awaiting the outcome of this.

8 JUDGE STEARLEY: So a decision in mid to
9 late May, is that acceptable?

10 MS. HOLSTEAD: Whatever you need, your
11 Honor, that's fine.

12 JUDGE STEARLEY: Are there any other
13 matters that we need to take up at this time? Hearing
14 none, the ancillary hearing in Case Nos. WC-2006-0082, et
15 al. and Case No. WO-2007-0277 is hereby adjourned. Thank
16 you all very much.

17 WHEREUPON, the hearing of this case
18 concluded.

19

20

21

22

23

24

25

I N D E X

FOLSOM RIDGE'S EVIDENCE:

JAMES T. CROWDER

Direct Examination by Mr. Comley	1151
Cross-Examination by Ms. Baker	1153
Cross-Examination by Ms. Orler	1159
Cross-Examination by Mr. Pugh	1210
Questions by Commissioner Appling	1216
Questions by Judge Stearley	1218
Recross-Examination by Ms. Baker	1219
Recross-Examination by Ms. Orler	1222
Redirect Examination by Mr. Comley	1225

COMPLAINANT ORLER'S EVIDENCE:

CATHY J. ORLER

Direct Testimony of Ms. Orler	1242
Cross-Examination by Ms. Baker	1260
Redirect Testimony of Ms. Orler	1263

COMPLAINANT PUGH'S EVIDENCE:

BENJAMIN D. PUGH

Direct Testimony of Mr. Pugh	1265
Cross-Examination by Ms. Baker	1267
Cross-Examination by Mr. Comley	1269
Redirect Testimony of Mr. Pugh	1274

STAFF'S EVIDENCE:

JAMES MERCIEL, JUNIOR

Direct Examination by Ms. Heintz	1276
Cross-Examination by Ms. Orler	1277
Cross-Examination by Mr. Pugh	1306
Cross-Examination by Ms. Holstead	1310
Cross-Examination by Mr. Comley	1311

	E X H I B I T S	MARKED	REC'D
1			
2	EXHIBIT NO. 106		
3	Direct Testimony of James T. Crowder	1151	1153
4	EXHIBIT NO. 107		
5	Surrebuttal Testimony of James T. Crowder	1151	1153
6	EXHIBIT NO. 108		
7	Affidavit of Cathy J. Orler, Photographs	1170	
8	EXHIBIT NO. 109		
9	2/24/05 Letter to Rick Rusaw from Cathy J. Orler	1174	
10	EXHIBIT NO. 110		
11	Engineering Report for Water Line Improvements at Big Island	1182	
12	EXHIBIT NO. 111		
13	Chapter 7 Underground Installation of Polyethylene Piping	1195	
14	EXHIBIT NO. 112		
15	Water Pipe	1228	1236
16	EXHIBIT NO. 113		
17	Certification, Design Guideline, City of Osage Beach Section 2 - Water System	1237	1239
18	EXHIBIT NO. 114		
19	Rebuttal Testimony of Cathy Orler	1242	
20	EXHIBIT NO. 115		
21	Surrebuttal Testimony of Cathy Orler	1242	
22	EXHIBIT NO. 116		
23	10/21/04 Letter to Reggie Golden from Breck Summerford	1248	1248
24	EXHIBIT NO. 117		
25	Rebuttal Testimony of Benjamin D. Pugh	1267	1267
	EXHIBIT NO. 118		
	Surrebuttal Testimony of James Merciel	1276	1277

1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3 COUNTY OF COLE) ss.

4 I, Kellene K. Feddersen, Certified
5 Shorthand Reporter with the firm of Midwest Litigation
6 Services, and Notary Public within and for the State of
7 Missouri, do hereby certify that I was personally present
8 at the proceedings had in the above-entitled cause at the
9 time and place set forth in the caption sheet thereof;
10 that I then and there took down in Stenotype the
11 proceedings had; and that the foregoing is a full, true
12 and correct transcript of such Stenotype notes so made at
13 such time and place.

14 Given at my office in the City of
15 Jefferson, County of Cole, State of Missouri.

16

17 Kellene K. Feddersen, RPR, CSR, CCR
18 Notary Public (County of Cole)
My commission expires March 28, 2009.

19

20

21

22

23

24

25