

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

The Staff of the Missouri Public)	
Service Commission,)	
Complainant,)	
)	
v.)	Case No. WC-2008-0030
)	
Suburban Water and Sewer Company)	
and)	
Gordon Burnam,)	
Respondents.)	

**SEPARATE ANSWER OF RESPONDENT
GORDON BURNAM TO COMPLAINANT'S COMPLAINT**

COMES NOW Respondent Gordon Burnam ("Burnam") and for his answer to the Complainant's Complaint in this action states and alleges as follows:

1. Burnam admits the allegations of paragraph 1 of the Complaint.
2. Burnam admit the allegations of paragraph 2 of the Complaint, except that Burnam denies that Bonnie Burnam is Suburban's registered agent.
3. Burnam admits the allegations of paragraph 3 of the Complaint.
4. Burnam admits the allegations of paragraph 4 of the Complaint.
5. Burnam admits the allegations of paragraph 5 of the Complaint.
6. Burnam admits the allegations of paragraph 6 of the Complaint.
7. Burnam denies the allegations of paragraph 7 of the Complaint.
8. Burnam denies the allegations of paragraph 8 of the Complaint and all subparts thereof.
9. Burnam denies the allegations of paragraph 9 of the Complaint.

10. In answer to paragraph 10, Burnam admits that a notice of dissolution was sent. Burnam affirmatively states that Suburban's directors later rescinded the notice of dissolution.

11. In answer to paragraph 11, Burnam admits that the Public Service Commission (the "PSC" or the "Commission") filed a petition in Boone County Circuit Court seeking injunctive relief. Burnam moves to strike the remaining allegations of paragraph 11 and the transcript attached to the Complaint as improper attempts to introduce evidence. The remaining allegations of paragraph 11 are denied.

12. The allegations of paragraph 12 are denied. Burnam affirmatively states that paragraph 12 mistates and mischaracterizes his testimony.

13. In answer to paragraph 13, Burnam admits that the language is accurately quoted from the statute. Burnam affirmatively states that he is not a water corporation and is not responsible individually for any part of the water system.

14. In answer to paragraph 14, Burnam admits that Suburban is responsible for providing safe and adequate service to the extent required by the law. Burnam denies that Burnam has any such responsibility or any responsibility to make improvements to the Suburban water system. All other allegations of paragraph 14 are denied.

15. The allegations of paragraph 15 are denied.

16. In answer to paragraph 16, Burnam admits that the language is accurately quoted from the statute. Burnam affirmatively states that he is not a water corporation and is not responsible individually for any part of the Suburban water system.

17. Burnam denies the allegations of paragraph 17 of the Complaint and all subparts thereof. Burnam further moves to strike the quoted and referenced provisions from the transcript as an improper means to introduce evidence before the Commission in this action.

18. Burnam denies the allegations of paragraph 18 of the Complaint.

19. Burnam denies the allegations of paragraph 19 of the Complaint.

20. In answer to paragraph 20, Burnam admits that the quoted language in paragraph 20 is accurately quoted from the case referred to therein. The remaining allegations of paragraph 20 are denied. Burnam affirmatively states and alleges that he is not personally responsible for Suburban's obligations.

21. In answer to paragraphs 21 through 27 of the Complaint, which are denominated as "Motion for Expedited Treatment," Burnam states that the Motion for Expedited Treatment has already been granted. However, to the extent that answers are required to those specific paragraphs, Burnam incorporates by reference his answers to paragraphs 1 through 20 above, denies paragraphs 22, 23, 25, 26, and 27, and states that no response is necessary to paragraph 24.

Affirmative Defenses

By way of further answer and defense, Burnam raises and pleads the following affirmative defenses:

1. All allegations of the Complaint not admitted above are denied.
2. Burnam reserves the right to raise additional affirmative defenses that come to light during discovery or through Burnam's inspection and due diligence.
3. The Commission lacks personal and subject matter jurisdiction over Burnam.

4. There is no constitutional, statutory or other valid authority or delegation giving the Commission or its general counsel the jurisdiction, power or authority to request or obtain relief against Burnam in his individual capacity, including to make any findings or impose any penalties against Burnam. Accordingly, the Complaint should be dismissed as to Burnam.

5. Burnam is not and never has been a public utility and is not subject to or otherwise bound by the jurisdiction of the Commission or any orders previously entered by the Commission. Further, the Complaint contains no allegations that Burnam is or ever has been a public utility. The Commission cannot make any findings or impose any penalties on or with respect to Burnam in his individual capacity.

6. Sections 393.140, 386.020 and 393.130 RSMo. cannot be expanded to apply to Burnam for any failure to contribute his own funds or for failure to take any action or in any other respect relative to the allegations in the Complaint because doing so would constitute a taking of private property without just compensation and due process in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 26 of the Missouri Constitution.

7. To the extent that the Commission is being requested to adjudicate any issues or make any findings relating to the Complaint or allegations contained therein the Commission is without jurisdiction or authority to do so because its exercise of any such function would constitute an invalid delegation of powers and a violation of due process and the doctrine of separation of powers under the United States and Missouri Constitutions.

8. Sections 386.020, 393.130, and 393.140 RSMo. are unconstitutional and void as applied in this case because they are vague and contrary to due process and do not convey to a person

of ordinary intelligence a sufficiently definite warning that they may result in penalties in an individual capacity or for acts or omissions which are impossible due to financial inability or otherwise.

WHEREFORE, Burnam prays for an order in his favor denying the relief requested in the Complaint and for other relief as the Commission deems just and proper.

/s/ Thomas M. Harrison

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