

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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4
5 TRANSCRIPT OF PROCEEDINGS
6 Evidentiary Hearing
7 July 9, 2008
8 Jefferson City, Missouri
9 Volume 3

10 The Staff of the Missouri Public)
Service Commission,)
11)
Complainant,)
12)
v.) Case No. WC-2008-0030
13)
Suburban Water And Sewer Company,)
14 Inc., and Gordon Burnam,)
Respondents.)

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17 COLLEEN M. DALE, Presiding,
CHIEF REGULATORY LAW JUDGE.

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20 ROBERT M. CLAYTON III,
TERRY JARRETT,
21 KEVIN GUNN,
COMMISSIONERS.

22

23 REPORTED BY:

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25

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

2 JUDGE DALE: We are here today, July 9th,
3 2008, in the matter of the Staff of the Missouri Public
4 Service Commission vs. Suburban Water and Sewer
5 Company, Inc. and Gordon Burnam, Respondents, Case No.
6 WC-2008-0030. We can begin with entries of appearances.

7 MS. BRUEGGEMANN: For the Staff of the
8 Public Service Commission, Shelley Brueggemann and Steve
9 Reed, located at 200 Madison Street, Jefferson City,
10 Missouri 65102.

11 JUDGE DALE: Thank you.

12 MS. BAKER: For the Office of the Public
13 Counsel, Christina Baker, Senior Public Counsel, P.O.
14 Box 2230, Jefferson City, Missouri 65102.

15 MR. HARRISON: For Respondents, Tom
16 Harrison, offices 1103 East Broadway, Columbia.

17 JUDGE DALE: If those of you who have
18 brought people who will be answering Commission questions
19 could introduce them, please, starting with Staff.

20 MS. BRUEGGEMANN: Yes, your Honor. We have
21 brought Martin Hummel, Staff of the PSC, here today to
22 answer Commission questions.

23 JUDGE DALE: Thank you.

24 MS. BAKER: Public Counsel is me, so if you
25 have questions, feel free.

1 JUDGE DALE: Thank you.

2 MR. HARRISON: Respondents have Gordon
3 Burnam, who's president of Suburban Water, Paula Belcher,
4 who's vice president, and Bill Marshall, an independent
5 engineer, all of whom are sitting behind me.

6 JUDGE DALE: Okay. Thank you. Is there
7 any preliminary matter that I need to address before we go
8 to the prepared statements?

9 Then Staff, if you'll go ahead and give
10 yours.

11 MS. BRUEGGEMANN: Good afternoon. We are
12 here today on a Stipulation & Agreement between Staff,
13 Suburban Water and Sewer Company and the OPC. The
14 Stipulation & Agreement was reached as a final resolution
15 of the remaining issues that we would have presented
16 evidence to the Commission for a decision on at the
17 hearing that was scheduled this week.

18 Specifically, the Stipulation & Agreement
19 goes ahead and requires Suburban to replace its standpipe
20 by a date certain, which is March 31, 2009, and it
21 requires that Suburban go ahead and get its approval -- or
22 its standpipe application, excuse me, filed with the DNR
23 by August 15th, which is not, what, a month away.

24 As a part of that, they would supply Staff
25 with -- excuse me -- they would supply Staff with a copy

1 of everything that they give to DNR. They would go ahead
2 and provide Staff with status reports every six weeks to
3 be able to monitor the construction progress and make sure
4 that Suburban's actually on task to reach that March 31st,
5 2009 deadline.

6 The Stipulation & Agreement also requires
7 that Suburban would file master meter and customer meter
8 readings with Staff so that they could make sure to
9 monitor water leakage in the system.

10 Now, why I say that this is sufficient for
11 final resolution of the remaining issues in this case is
12 that this was a future improvements complaint case. We
13 brought it alleging that Suburban needed to put in
14 additional water meters, a ten-year replacement program,
15 extra flush valves, a certified operator, a pressure
16 reducing valve, a new standpipe and other improvements to
17 maintain adequate system pressure.

18 So far, since August of 2007, Suburban has
19 installed meters to all buildings from about August to
20 December 2007. Suburban implemented a ten-year
21 replacement program. They installed four flush valves
22 around September of 2007, along with additional pipeline
23 control valves to meet the requirement of flushing
24 capability of at least three feet per second in all mains.

25 They employed a certified operator around

1 September of 2007 to maintain Suburban's well and
2 distribution system. They replaced the pressure switch in
3 the fall of 2007 with a more sensitive pressure switching
4 control to assist in maintaining a minimum pressure of
5 20 PSI.

6 So, therefore, the only issues left are the
7 issue of the standpipe and just the issue of additional
8 monitoring since they put in all of these improvements to
9 make sure that the system is safely and adequately being
10 maintained and operating for the customers.

11 Now, as some of you might remember who were
12 here, and for those of you who have reviewed the record,
13 this future improvements case was filed as a result of
14 another complaint case that went to hearing last summer in
15 July. That case was dealing with violations of a
16 Commission Order where Suburban in a 2005 rate case had
17 made a disposition agreement, and essentially some of the
18 same things that we were alleging that need to be
19 improved, like installation of meters, they had agreed to
20 in that 2005 case.

21 So last year the Commission found that they
22 had violated the terms of that agreement. However, it was
23 found in a ruling from the Bench that it would be a more
24 appropriate way to hear the case if we did future
25 improvements in a separate case and the violations dealt

1 with in last year's hearing.

2 The Commission found that they did violate
3 the terms of that agreement. The Commission did authorize
4 Staff or General Counsel's Office to go seek penalties.
5 General Counsel's office did file a case that's currently
6 pending seeking penalties of those violations.

7 Staff had also -- or excuse me. The
8 Commission had also filed an injunction case to make sure
9 that Suburban kept its water on to its customers, which
10 was another allegation about last year's case, a permanent
11 injunction in that case was issued on March 11th, 2008.

12

13 So here we feel that for resolution of this
14 case, it's really about getting the system replacement in,
15 the improvements in. We have a scheduled outline. They
16 have gone ahead and actually done the majority of the
17 replacement, and so we feel that this would fully resolve
18 our concerns. Now, because the stipulation fully resolves
19 the issues left, we dismissed Gordon Burnam as a
20 respondent. You probably saw that filing, because of the
21 deadlines and everything involved.

22 Also filed yesterday morning, that I'm sure
23 you saw, was Clyde Zelch's deposition taken December 6,
24 2007 with his report and pictures. He is a tank
25 inspector. He inspected the standpipe. He cleaned it.

1 He took a detailed report. He took pictures. So you can
2 see for yourself the bad state of the standpipe, the
3 blisters, just the true description of it.

4 Exhibit 2 is Staff's report filed in last
5 year's complaint case that is a starting point for where
6 we were at July 20th of 2007. Exhibit 3 is an update.
7 September 20th, 2007, Staff filed another report. And
8 November 13th is an additional follow-up report. So you
9 can kind of see the progression of events.

10 We would ask that the Commission approve
11 this Stipulation & Agreement, but we would also ask that
12 the Commission go ahead and adopt and order the
13 Stipulation & Agreement with the specific terms in the
14 actual order, going ahead and reiterating everything so
15 that you fully absorbed the Stipulation & Agreement into
16 your Order for any future action that hopefully will never
17 have to be taken. Thank you.

18 JUDGE DALE: OPC?

19 MS. BAKER: Given the exhibits that have
20 been filed in this case for the Office of the Public
21 Counsel, it's imperative that action be taken in order to
22 make sure that the customers of Suburban are supplied with
23 a safe and adequate water supply. Therefore, the Office
24 of Public Counsel feels that the Stipulation & Agreement
25 moves us toward that goal.

1 And we would point out that the conditions
2 that are contained within the agreement allow us to be
3 able to monitor the situation. There are status reports
4 that are required. There's a specific timetable on which
5 things have to be done, beginning with the Department of
6 Natural Resources permit application where the details of
7 the standpipe replacement will be approved by the
8 Department.

9 So, therefore, the Office of the Public
10 Counsel feels that the Stipulation & Agreement is a good
11 resolution to this case. We have signed the agreement and
12 we support it fully, and we therefore wish that the
13 Commission would approve the Stipulation & Agreement and
14 we support fully the individual conditions being placed in
15 the Order as well.

16 MR. HARRISON: Good afternoon. I only have
17 a brief opening statement here. We certainly agree that
18 the standpipe issue with regard to the Suburban system is
19 the only material issue. We think it's the only issue,
20 but certainly it's the only material issue.

21 The list of improvements that Suburban has
22 made over the past year or 18 months that Ms. Brueggemann
23 gave you a few minutes ago is something that we would also
24 stress. We've replaced numerous meters. We've instituted
25 a meter replacement program. We've replaced meter wells

1 in a few instances. We have hired a certified water
2 operator who's been working about, I don't know, ten
3 months I guess, something like that. The flush valves
4 have been addressed. Suburban has worked with Staff to
5 change its billing practices, which Suburban certainly
6 appreciates. So we think it's true, we think the record
7 before you will show that significant changes and
8 improvements have been made to the system.

9 There are legal issues, significant legal
10 issues that would have had to have been litigated in this
11 case but for this settlement, some of which were as far as
12 we could tell without precedent in the state. And so for
13 a variety of reasons the decision was made by our client
14 to take the step to agree to replace the standpipe.

15 Our client has engaged engineers, one of
16 whom's here today to answer questions that you may have.
17 Work's already begun on engineering, on the engineering
18 side. I think preliminary plans have already been
19 submitted to some of your Staff people. I'll let Mr.
20 Marshall speak to that, but I think he's prepared to
21 submit final plans, if you will, in the very near future
22 and certainly by the August deadline.

23 So we appreciate the opportunity to appear
24 here today and look forward to answering any questions
25 that you might have.

1 Thank you.

2 JUDGE DALE: Thank you, Mr. Harrison. I
3 guess we'll move on to Commissioner questions at this
4 time.

5 COMMISSIONER JARRETT: Yes. Good
6 afternoon. I just have a couple of questions. The
7 Stipulation & Agreement on page 3, first paragraph, talks
8 about a transfer of assets to the water district by
9 July 31st, 2008. Can anyone, it doesn't matter who, but
10 can anyone give me an update on what the status of that
11 possible transfer is?

12 MR. HARRISON: I'll be glad to, if that's
13 all right. We made a proposal to the -- to a public water
14 supply district there in Boone County. We had
15 discussions. We appeared before them in a board meeting,
16 I think it was in early May. The response we got was a
17 counter proposal which involved significant --
18 significantly more in financial concessions than the
19 company was able to do.

20 We made one last counter proposal to the
21 district probably two weeks ago, and that was rejected,
22 and so I think that everybody's agreed that it doesn't
23 make any sense to talk to them any further. So the answer
24 is we tried, I think everybody tried in earnest and in
25 good faith and we weren't able to get a deal done.

1 COMMISSIONER JARRETT: Great. Thank you.

2 The next question, again anyone can answer this. Does
3 Suburban have the adequate assets to handle these or to
4 pay for these changes?

5 MR. HARRISON: I think the plan is to
6 finance this from a loan or series of loans from
7 Mr. Burnam, who's here today. Obviously he's prepared to
8 do that. That's the plan with regard to how it's going to
9 be financed, at least up front.

10 COMMISSIONER JARRETT: And I guess this is
11 for Staff and Public Counsel. Have you talked to any of
12 the consumers, any of the ratepayers there as far as
13 service? Has -- do they feel that their service has
14 improved?

15 MS. BAKER: We had a public hearing before
16 the improvements were put into place. After the
17 improvements were put into place, I have not received any
18 more customer contacts in my office.

19 MS. BRUEGGEMANN: I believe Martin Hummel
20 has discussed with some customers.

21 MR. HUMMEL: I've had some contact with
22 customers.

23 JUDGE DALE: Would you come up?

24 MR. BURNAM: I'm sorry. Is there any way
25 to turn the volume up?

1 JUDGE DALE: I don't have a way to turn it
2 up, but I will remind everybody to please speak into your
3 microphones. Make sure that your microphones are on. And
4 if Mr. Hummel and Mr. Burnam and Mr. Marshall could please
5 stand up and be sworn, that way we can have this all give
6 and take and won't have to worry about who's sworn and
7 who's not.

8 (Witnesses sworn.)

9 JUDGE DALE: Thank you.

10 MR. HUMMEL: I have had some, not extensive
11 contact with the customers, but have also done some
12 pressure checking, and since several of these improvements
13 have been put in place, the pressure and the service has
14 been -- I have not had complaints, and what contact I have
15 had indicates that they have had consistently good,
16 reasonable service.

17 In conjunction with what I was saying, we
18 also did flush the system, and so I think the service has
19 been good since several of these improvements have just
20 been put in place since about October of last year.

21 COMMISSIONER JARRETT: Thank you. I don't
22 have any further questions.

23 JUDGE DALE: Commissioner Gunn?

24 COMMISSIONER GUNN: Most of my questions
25 were answered, but I just want to be clear. We don't

1 think there's any possibility that the conditions set
2 forth in here about a transfer of assets by July 31st are
3 going to happen now? There's no backup person that you're
4 talking to or anything like that?

5 MR. HARRISON: There was another party that
6 we were talking to, but they said no before the Public
7 Water Supply District, and so I think your statement is
8 accurate. I don't think there's any reasonable likelihood
9 at all that's going to happen.

10 COMMISSIONER GUNN: So that means that --
11 and I'll direct this towards Staff -- that the March 31st,
12 2009 deadline is the absolute final deadline for the
13 standpipe to be replaced. My question is, is that the
14 shortest reasonable amount of time that this can be
15 replaced? There is a provision in here that allows for an
16 extension of time by the Commission, and I think sometimes
17 we tend to give people a bit more time than is necessary.

18 And I think the deadline's so far very
19 tight, the July 31, and August 15, and I'm perfectly fine
20 with that. I just want to make sure that that March 31st,
21 2009 time frame is a reasonable amount of time that you
22 guys feel can be done -- that the work can be done but
23 we're not giving too much time.

24 MR. HUMMEL: The Staff had some significant
25 discussion as to what kind of date to put on that, and the

1 construction could certainly be done somewhat sooner than
2 March 31st, but given the possibility -- there's
3 possibility of complications that can occur, the process
4 of getting the Department of Natural Resources approval on
5 plans and going through the process of lining up a
6 contractor to do the work, those kind of things certainly
7 can delay what you would otherwise expect to be sooner
8 construction, but there is the possibility that they could
9 have the standpipe in place well before the March 31st
10 date.

11 COMMISSIONER GUNN: But it's a pretty tight
12 deadline with some wiggle room in there, in your opinion?

13 MR. HUMMEL: It's got wiggle room in there
14 and we consider that to just be a reasonable date to use.

15 COMMISSIONER GUNN: Thank you. That's all
16 the questions I have.

17 COMMISSIONER CLAYTON: I've got a couple of
18 questions. I think the lawyers will be able to answer
19 these, but don't go anywhere, Mr. Hummel. I mean, you can
20 go back to your seat, but don't leave the room.

21 JUDGE DALE: Mr. Hummel, why don't you just
22 sit at one of these tables that have microphones and that
23 way you can just pipe up when you need to.

24 COMMISSIONER CLAYTON: I wanted to ask a
25 couple of questions here and it shouldn't take too long.

1 First of all, I didn't understand,
2 Ms. Brueggemann, you said that Mr. Burnam is subject to
3 a -- you-all filed a motion to dismiss him personally from
4 this action, and I haven't seen that motion. I was
5 wondering if you could explain why that is the case,
6 because my initial question reviewing the Stipulation &
7 Agreement is that he did not sign the agreement as an
8 individual but as an officers of the corporation. Can you
9 elaborate on that for me?

10 MS. BRUEGGEMANN: That is true,
11 Commissioner Clayton, he did sign it in the capacity as
12 the president of Suburban Water and Sewer. We went ahead
13 and decided in light of the stipulation to go ahead and
14 dismiss him because we think we have another forum that if
15 for some reason this agreement is violated and we had to
16 pursue something in circuit court with the Commission's
17 authorization and after something was presented here to
18 gain that authorization, that we think we have another
19 forum to go ahead and pierce the corporate veil to be able
20 to go after him, if necessary. So we didn't feel like we
21 were blocking ourselves from ultimately having that path
22 if we needed it.

23 COMMISSIONER CLAYTON: Okay. So as I
24 understand what you're saying is that his liability would
25 stem from liability of Suburban Water and Sewer and that

1 at the circuit court level you would attempt to assert
2 some sort of piercing the corporate veil argument and have
3 the liability fall to him personally; is that correct?

4 MS. BRUEGGEMANN: Yes, because part of
5 piercing the corporate veil and one of the elements of the
6 whole fraud or illegality, you know, is you going ahead
7 and exercising --

8 COMMISSIONER CLAYTON: Yeah, I don't
9 remember those elements, but I'll take your word for it.

10 Well, let me ask you this. Let's say we
11 have a violation or an alleged violation of the terms of
12 the Stipulation & Agreement. Explain to me what will
13 happen -- let's say we've removed from the table that the
14 water district's going to take it over, so we can
15 eliminate that language from the agreement in that
16 Suburban is going to be taking action to address this
17 standpipe. So let's say that the standpipe doesn't go in
18 or there's a disagreement how it goes in or there's some
19 problem.

20 Talk to me about enforcement of the terms
21 of this stipulation and whether it's just a matter of
22 trying to force some sort of specific performance or if
23 there are penalties that attach, or talk to me about
24 enforcement if this does not work out.

25 MS. BRUEGGEMANN: Well, I think if the

1 from a prior case?

2 MR. HARRISON: There are no penalties
3 requested in this case.

4 MS. BRUEGGEMANN: I'm sorry. Prior -- I
5 thought you were talking about the WC-2007-0452 case.

6 COMMISSIONER CLAYTON: Well, I'm going to
7 get to that, but let's talk about this case. The
8 Complaint that Staff filed in this case, Staff did or did
9 not request penalties?

10 MS. BRUEGGEMANN: No. We limited it to the
11 actual improvements that we wanted Suburban to go ahead
12 and get done.

13 COMMISSIONER CLAYTON: So we don't have
14 a -- we don't have a penalty action that's hanging out
15 there that we're not resolving by approving the
16 Stipulation and Agreement, basically we're resolving all
17 the issues that were prayed for by the Staff?

18 MS. BRUEGGEMANN: Yes, Commissioner
19 Clayton.

20 COMMISSIONER CLAYTON: Would the parties
21 agree with that?

22 MS. BAKER: Yes, Public Counsel would
23 agree.

24 MR. HARRISON: Yes.

25 COMMISSIONER CLAYTON: Well, then -- now

1 let's go to this other case. What was the case number for
2 the prior case?

3 MS. BRUEGGEMANN: WC-2007-0452.

4 COMMISSIONER CLAYTON: And that's the one
5 we resolved about a year ago or last year?

6 MS. BRUEGGEMANN: Yes, Report and Order was
7 issued August 28th, 2007.

8 COMMISSIONER CLAYTON: August 28th. Gosh,
9 that's almost a year ago. Were -- in that Complaint filed
10 by Staff, were penalties requested?

11 MS. BRUEGGEMANN: Yes.

12 COMMISSIONER CLAYTON: Yes. And what did
13 we do in terms of penalties? Refresh my recollection of
14 what we did in the Report and Order.

15 MS. BRUEGGEMANN: You authorized -- the
16 Commission specifically authorized the General Counsel's
17 Office to be able to pursue penalties for the terms that
18 were violated as to the not installing meters, not
19 implementing a ten-year replacement program, not
20 installing flush valves, and not replacing a higher inlet
21 on the standpipe, and that penalty action was filed
22 September 21st, 2007.

23 COMMISSIONER CLAYTON: And now it's before
24 the Supreme Court?

25 MS. BRUEGGEMANN: Just on a venue question,

1 and as soon as that comes back down, it will hit the
2 ground running and we'll go forward with it.

3 COMMISSIONER CLAYTON: What venue was
4 prayed for by --

5 MS. BRUEGGEMANN: We filed it in Boone, and
6 I believe the opponent asked for Cole. The court granted
7 Cole, and there was a question as to the basis for that
8 venue, why it had to be changed.

9 COMMISSIONER CLAYTON: Who's the appellant?

10 MS. BRUEGGEMANN: The Commission.

11 COMMISSIONER CLAYTON: The Commission is
12 the appellant?

13 MS. BRUEGGEMANN: Uh-huh.

14 COMMISSIONER CLAYTON: And this Stipulation
15 does not resolve that case in any way?

16 MS. BRUEGGEMANN: No. This is strictly a
17 future improvements case. On the second -- on the first
18 day of the hearing last year in this other case, the Bench
19 made a ruling that specifically said a separate complaint
20 needs to be filed to address future improvements.

21 COMMISSIONER CLAYTON: I understand, I
22 understand, but this Stip in no way should be considered a
23 global settlement for all disputes between the utility and
24 the Commission, correct?

25 MS. BRUEGGEMANN: No, Commissioner Clayton,

1 and I believe the other parties would agree that that's
2 not a -- it's not considered to be a global settlement.

3 MS. BAKER: That's correct, Public Counsel
4 has not agreed to a global settlement.

5 COMMISSIONER CLAYTON: This may be a
6 question for Mr. Hummel, and if anyone knows, you can
7 chime in. DNR is not a party to this case, as I
8 understand it, or at least they're not a party to the
9 Stipulation. Is DNR, to the best of your knowledge, aware
10 of this Stip and are they satisfied with the future
11 actions that need to be taken to get the system in good
12 working order?

13 MR. HUMMEL: I haven't specifically -- I
14 haven't specifically spoken to DNR about this Stip, but I
15 know there's been some contact with people with DNR with
16 regard to the specifics of what the company would be
17 required to do, including the issue of obtaining a
18 construction permit for the standpipe and what would be
19 required of that standpipe.

20 COMMISSIONER CLAYTON: If all actions are
21 taken in accordance with this Stipulation, and if all the
22 other prior orders are complied with, is there any reason
23 for us to believe that DNR will be not satisfied with the
24 system after completion of all these projects?

25 Saying it another way, are they going to be

1 satisfied once all these projects are done that the system
2 is up and running in good order?

3 MR. HUMMEL: First of all, I think the
4 answer is yes, and part of that answer is because in the
5 Stip, part of what you're stipulating to is that the
6 project will be done in a manner that does satisfy the DNR
7 regulations.

8 MS. BRUEGGEMANN: Commissioner Clayton, if
9 I may add, from the actual hearing last year, Staff
10 presented Everett Baker, who works out of the regional
11 office in Macon, and he had testified that the standpipe
12 was in need of replacement and meters did need to be
13 installed and supported the general Stipulation &
14 Agreement, just his testimony last year as to what was
15 needed. So that is already in evidence in that prior
16 complaint case.

17 COMMISSIONER CLAYTON: All right. I don't
18 think I have any other questions. Good luck to the
19 parties.

20 JUDGE DALE: Commissioner Jarrett, do you
21 have any follow-up questions?

22 COMMISSIONER JARRETT: Nothing further.

23 JUDGE DALE: Commissioner Gunn?

24 COMMISSIONER GUNN: Nothing further, your
25 Honor.

1 JUDGE DALE: Does anyone have anything that
2 they would like to add before we close the record on this?

3 MR. HARRISON: No, we do not; respondents
4 do not.

5 JUDGE DALE: Thank you. Then in that case
6 we'll go off the record and conclude this proceeding.

7 WHEREUPON, the hearing of this case was
8 concluded.

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest Litigation
7 Services, and Notary Public within and for the State of
8 Missouri, do hereby certify that I was personally present
9 at the proceedings had in the above-entitled cause at the
10 time and place set forth in the caption sheet thereof;
11 that I then and there took down in Stenotype the
12 proceedings had; and that the foregoing is a full, true
13 and correct transcript of such Stenotype notes so made at
14 such time and place.

15 Given at my office in the City of
16 Jefferson, County of Cole, State of Missouri.

17 _____
18 Kellene K. Feddersen, RPR, CSR, CCR
19 Notary Public (County of Cole)
20 My commission expires March 28, 2009.
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