

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

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

**RESPONDENTS' STATEMENTS OF POSITION CONCERNING  
RESPONDENTS' LIST OF ISSUES**

Pursuant to the Scheduling Order entered in this case, Respondents submit these Statements of Position concerning Respondent's List of Issues to be determined in this action.

As a preliminary matter, Respondents note that Respondent Gordon Burnam has filed a Motion to Dismiss in this cause asserting, among other things, that he is not subject to the Commission's jurisdiction. Respondent Gordon Burnam does not consent to the Commission's jurisdiction over him by virtue of filing this document or participating in any hearing in this matter. Respondent Gordon Burnam restates and incorporates by reference herein his Motion to Dismiss.

Respondents' Statements of Position on the Respondents' List of Issues are as follows:

1. Is Respondent Gordon Burnam a public utility regulated by the Commission?

Respondents' Position: No.

2. Is Respondent Gordon Burnam subject to personal liability in this action under the doctrine of "piercing the corporate veil"?

Respondents' Position: No.

3. If Gordon Burnam individually is not a public utility nor subject to regulation based on a "piercing the corporate veil" theory, is there any other basis for the Commission to enter an order against him in any respect?

Respondents' Position: No.

4. Does the Commission have jurisdiction to make a determination that the protections of Suburban's corporate veil afforded to its shareholders can be pierced with respect to Gordon Burnam?

Respondents' Position: No.

5. Is Gordon Burnam individually subject to the Commission's regulation?

Respondents' Position: No.

6. Is there a constitutional, statutory or other valid delegation or other authority giving the staff or the Commission the jurisdiction, power or authority to request or obtain relief against Gordon Burnam in his individual capacity?

Respondents' Position: No.

7. Does Gordon Burnam sell water to the public for compensation?

Respondents' Position: No.

8. Does Gordon Burnam individually own, operate, control or manage plant or property used in distributing, selling or supplying water?

Respondents' Position: No.

9. Does Gordon Burnam individually hold a certificate of convenience and necessity with regard to supplying water?

Respondents' Position: No.

10. If Gordon Burnam individually is not a public utility, does the Commission have the ability and authority to regulate him?

Respondents' Position: No.

11. Has the Commission previously determined that Gordon Burnam individually is not subject to its regulation, thereby necessitating that Gordon Burnam be dismissed as a respondent in this action?

Respondents' Position: Yes.

12. If the Commission determines that Gordon Burnam individually is subject to the Commission's regulation and jurisdiction, will such ruling on the part of the Commission improperly expand its jurisdiction?

Respondents' Position: Yes.

13. If the Commission exercises and asserts jurisdiction over Respondent Gordon Burnam individually, or orders him to make improvements to the Suburban Water system, would such actions constitute a taking of private property without just compensation and due process in violation of the 5th and 14th Amendments to the U.S. Constitution and Article I, Sections 10 and 26 of the Missouri Constitution?

Respondents' Position: Yes.

14. What improvements to the Suburban water system are required at this time such that Suburban can provide safe and adequate water service, and to what extent are those improvements necessary and feasible?

Respondents' Position: No improvements are necessary at this time, and it would not be feasible for the Commission to order Suburban to make improvements to the system.

15. Should Respondent Gordon Burnam's Motion to Dismiss in this action be granted?

Respondents' Position: Yes.

16. Are Sections 386.020, 393.130 and 393.140 RSMo. constitutional and not vague or contrary to due process and do those provisions of law convey to a person of ordinary intelligence a sufficiently definite warning that they may result in penalties in an individual capacity for acts or omissions which are impossible due to financial inability or otherwise?

Respondents' Position: Those provisions of law are unconstitutional as applied in this case for the reasons set forth previously by Respondents.

Respectfully submitted,

/s/ Thomas M. Harrison  
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#### CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document have been mailed or hand-delivered, and electronically mailed to Shelley Syler Brueggemann P. O. Box 360, Jefferson City, MO 65102, shelley.brueggemann@psc.mo.gov, and Christina L. Baker, Office of the Public Counsel, P.O. Box 2230, Jefferson City, MO 65102, christina.baker@ded.mo.gov, on July 2, 2008:

/s/ Thomas M. Harrison