

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

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

**STIPULATION AND AGREEMENT**

As a result of discussions among Staff of the Missouri Public Service Commission ("Staff"), Complainant, and Suburban Water and Sewer Company ("Suburban"), and Gordon Burnam, Respondents, and the Office of Public Counsel (OPC), the Parties hereby submit the following Stipulation and Agreement ("Agreement") to the Missouri Public Service Commission ("Commission").

**BACKGROUND**

On July 27, 2007, the Staff filed a Complaint against Suburban and Gordon Burnam alleging that Suburban was failing to provide safe and adequate water service to its customers and asking the Commission to order the Respondents to make improvements to the water system. The Staff claimed that Suburban needed: additional water meters, a ten year meter replacement program, flush valves, a certified operator, a pressure reducing valve, a new standpipe, and improvements in order to maintain adequate system pressure.

On September 20, 2007, the Staff filed a report describing significant improvements to the Suburban water system. Suburban hired a certified operator to operate the system, installed many new water meters, provided a plan of the water distribution system, installed flush valves, and the system appeared to be maintaining adequate water pressure.

On November 13, 2007, the Staff filed a supplemental report describing the status of improvement projects at Suburban. Suburban installed meters on all of its service connections and Staff verified that the flush valves were successfully flushing Suburban's water system.

On January 4, 2008, the Staff filed an updated report alleging continued deficiencies with the standpipe and requesting a hearing and disposition of this case.

On June 19, 2008, in anticipation of a July 8, 2008 evidentiary hearing, the parties filed separate lists of issues for determination. The Staff claims that the improvements required for safe and adequate service are replacing the standpipe and maintaining system integrity.

Suburban has been in negotiations with the Consolidated Public Water Supply District No. 1 of Boone County (the Water District) regarding a proposed transfer of the assets of Suburban to the Water District. To date, no agreement has been reached between them.

The parties to this stipulation and agreement present this agreement as a resolution of all contested issues in this case.

## **STIPULATION AND AGREEMENT**

### **A. System Improvements**

Subject to the conditions, limitations and agreements set forth below, the parties agree as follows:

1. If an agreement is not reached to transfer Suburban's assets to the Water District by July 31, 2008, then Suburban shall dismantle and remove its current standpipe and replace it with a standpipe of sufficient dimension to provide safe and adequate water service to Suburban's customers. Suburban must acquire the approval of the Department of Natural Resources (DNR) prior to construction of the new standpipe. Suburban will exercise its best efforts, in good faith, to obtain such DNR approval. Suburban agrees to provide the Staff with copies of all information provided to DNR regarding the standpipe project. Suburban agrees to submit its standpipe project application to DNR no later than August 15, 2008. Suburban agrees to comply with DNR plan modification requests that are consistent with DNR regulations. Suburban agrees to inform Staff of such requirements. Suburban agrees to provide the Staff with status reports regarding construction progress every 6 weeks with the first report due 6 weeks after the effective date of an order approving this stipulation and agreement. The standpipe project shall be completed and the standpipe fully operational and used for service no later than March 31, 2009, unless an extension of time is granted by the Public Service Commission.

2. Suburban shall continue to provide monthly reports regarding master meter and customer meter readings in order for the Staff to monitor for any water leakage in the system.

3. The parties agree that the following documents shall be admitted as evidence in any hearing in this case:

Staff Report dated September 20, 2007

Staff Report dated November 13, 2007

Deposition of Clyde Zelch dated December 6, 2007, including Zelch's report and photographs, attached to the deposition as exhibits.

4. If the Commission approves a transfer of Suburban's assets to another entity to continue water service to Suburban's customers, then the Parties are relieved of any obligation under this stipulation and agreement and it shall become void and have no effect.

#### **B. Complete Settlement**

The agreement set forth above represents a full and comprehensive settlement of this Complaint; it is a result of negotiation and compromise among the Parties and the fact that an agreement was reached or that a Party is or is not a signatory shall not be considered to concede any issue listed in any Party's List of Issues filed on June 19, 2008. Though the Staff agrees to dismiss its claims against Gordon Burnam without prejudice as part of the stipulation and agreement to reach a final resolution of its Complaint, the Staff does not concede by this Agreement or a dismissal that Gordon Burnam should not be held personally liable for Suburban's obligations.

Suburban, including its successors and assigns or agents, agree not to seek attorneys' fees and/or costs from the Staff, the Commission or OPC, incurred as a result of these complaints, the investigation, and this settlement.

**C. Future Rate Cases**

This settlement does not constitute any finding for future ratemaking purposes, and the Parties expressly reserve their rights to examine any and all issues in future rate cases. Suburban expressly reserves its right to seek recovery for any and all of the system improvements in future rate cases.

**D. The Agreement is in the Public Interest**

The Parties agree the terms of the Agreement are in the public interest and should be approved by the Commission. A settlement will allow Suburban to put this matter behind it and concentrate its energies on providing safe, reliable, and affordable water service. At the same time, it will allow Staff to allocate scarce time and resources to other important and pressing matters.

**E. When the Agreement Becomes Effective**

This Agreement becomes effective upon Commission approval without modification by final Commission order. Such order becomes "final" either by issuance of a Commission order on rehearing or, if no rehearing, on the effective date of the order.

**THE EFFECT OF THE AGREEMENT**

**A.** Except as specifically provided above, the Parties shall not be deemed to have approved or acquiesced in any question of Commission

authority or other regulatory principle that may underlie this Agreement, or for which provision is made in this Agreement.

B. This Agreement is based on the unique circumstances leading to and presented by the Complaint. Except as specifically provided herein, this Agreement shall not be construed to have precedential impact in any other proceeding.

C. The provisions of this Agreement have resulted from negotiations among the Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, it shall be void and no Party shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

D. When approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the Parties. The Parties shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.

E. This Agreement contains the entire agreement of the Parties concerning the Complaints and Investigation.

#### **COMMISSION APPROVAL OF THE AGREEMENT**

A. If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum addressing the matter requested by the Commission. Suburban shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of the Staff's memorandum, a responsive memorandum, which shall also be

served on Staff and OPC. The contents of any memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other Party to this Agreement, whether or not the Commission approves and adopts this Agreement.

B. The Staff shall also have the right to provide, at any agenda meeting at which this Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide Suburban with advance notice of what oral explanation the Commission requests and when the Staff shall respond to the request. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to the Commission's Protective Order rule.

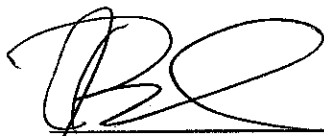
C. If the Commission does not unconditionally approve this Agreement without modification, neither this Agreement or any part hereof, nor any matters associated with its consideration by the Commission, shall be considered a waiver of the rights that any Party has to a hearing on the issues presented by the Agreement, for cross-examination, or for a decision in accordance with Section 536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the Parties shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions, memoranda, testimony or exhibits that have been offered or received in support of this Agreement shall thereupon become privileged as reflecting the substantive content of settlement discussions and shall be stricken

from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

D. In the event the Commission accepts the specific terms of the Agreement, the Parties waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510 RSMo 2000. This waiver applies only to a Commission order approving the Agreement or other Report and Order approving this Agreement, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Agreement.

E. Regardless of whether the Commission does not accept or accepts the specific terms of the Agreement, nothing herein shall be considered as an admission against interest by any Party.

**WHEREFORE,** the undersigned Parties respectfully request the Commission to issue an order in this case approving the Agreement subject to the specific terms and conditions contained therein.



Jim Busch  
Manager-Water and Sewer Department  
For the Staff of the Missouri Public Service Commission



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