

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 6<sup>th</sup> day of  
September, 2007.

The Staff of the Missouri Public Service  
Commission,

Complainant,

v.

Suburban Water and Sewer Company,  
Inc., and Gordon Burnam,

Respondents.

**Case No. WC-2008-0030**

**ORDER SUSTAINING OBJECTIONS AND GRANTING MOTIONS TO  
STRIKE**

Issue Date: September 6, 2007

Effective Date: September 16, 2007

In this complaint, which was filed on July 27, 2007,<sup>1</sup> the Staff of the Missouri Public Service Commission ("Staff") seeks Commission orders: (1) directing Staff to investigate the quality of water supplied by Suburban Water and Sewer Company, Inc. ("Suburban") and Gordon Burnam and the methods employed by them in supplying and distributing water for any purpose; (2) directing Staff to file a recommendation concerning that investigation; (3) setting this matter for a full evidentiary hearing; and (4) requiring Suburban and Mr. Burnam to make reasonable improvements to the water system to promote the public interest, preserve the public health, and protect Suburban's customers.

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<sup>1</sup> All dates specified in this order refer to the calendar year 2007.

On August 6, the Commission issued an order directing its Staff to promptly commence the specified investigation, and to file a report concerning the results of that investigation no later than September 20.

The complaint also included Staff's Motion for Expedited Treatment, in which Staff requested priority treatment and consideration of its complaint under Commission Rule 4 CSR 240-2.080(16). In particular, Staff asked that the Commission hold an evidentiary hearing by no later than October 15, and that it issue its decision by no later than November 15. The Commission granted that motion, which was not opposed by any party, by order dated August 24.

On August 30, Suburban, by and through its counsel, filed what it called a "Motion for Nonunanimous Stipulation and Agreement and Motion for Expedited Treatment," which included an exhibit entitled "Stipulation and Agreement." Suburban's motion and the attached Stipulation and Agreement were signed and filed solely by the attorneys for Suburban. The other two parties in this case (Staff and the Office of the Public Counsel ("OPC")), neither signed nor jointly filed these documents.<sup>2</sup>

In its motion, Suburban avers: "This motion and all attachments constitute a settlement offer." Suburban's motion also states: "Respondent hereby proposes the stipulation and agreement attached as Exhibit A hereto, and incorporated by reference herein, which has not been approved by the OPC, the Staff, or the Commission, but which it believes will effect a fair and full settlement and resolution of the Cases." In its prayer for

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<sup>2</sup> Suburban also filed a set of identical pleadings in Case No. WC-2007-0452. The Commission will address those pleadings in a separate order in that case. However, the Commission notes that on August 28, the Commission issued its Report and Order in Case No. WC-2007-0452, which has an effective date of September 7. For this reason, and because Suburban has not filed an application for rehearing or motion for reconsideration pursuant to Commission Rule 4 CSR 240-2.160, or a motion for clarification, OPC and Staff contend that Suburban's latest pleadings constitute "an inappropriate *ex parte* communication to the Commission for purposes of revisiting the Commission's Report and Order without filing a motion for rehearing."

relief, Suburban asked the Commission to “approve the attached stipulation and agreement and for such other and further relief as the Commission deems just and proper in the circumstances.”

On August 31, OPC filed its Objection and Motion to Strike, in which it requested that the Commission strike Suburban’s August 30 filings in their entirety since they are “inappropriate communications with the Commission containing confidential settlement negotiation information between the parties” and represent “an inappropriate unilateral attempt to communicate *ex parte* with the Commission as well as to bypass the other parties in these cases and open settlement negotiations directly with the Commission.” A few days later, on September 4, Staff filed a pleading titled “Staff’s Objection and Motion to Strike Suburban’s Improper Unilateral Settlement Offer,” in which it raised similar concerns and also requested that the Commission strike Suburban’s “improper motion and Stipulation and Agreement as an offer of settlement to the Commission,” which is not a party but a neutral adjudicator in Case No. WC-2008-0030.

While the Commission certainly encourages compromise and settlement of contested claims in general, the Commission finds that both objections are well taken. As correctly noted by OPC and Staff, at present there is no completed, multilaterally-negotiated “stipulation” or “agreement” for the Commission to approve – instead, there is only an offer from Suburban. Furthermore, while portions of Exhibit A have evidently been used by the parties in an attempt to settle Case No. WC-2008-0030, it clearly does not constitute a completed negotiated settlement involving two or more parties; the confidential settlement negotiation information it contains was not intended to be revealed to the Commission or to the public; neither OPC nor Staff agreed to the disclosure of any such information to either the Commission or the public; and Suburban’s pleadings contain

certain factual assertions that are vigorously contested by OPC and Staff. Instead, Suburban filed the documents with the Commission as if they had been mutually agreed on without first obtaining permission from or even notifying OPC or Staff.

For all these reasons, the Commission will grant OPC's August 31 Motion to Strike, as well as Staff's September 4 Motion to Strike Suburban's Improper Unilateral Settlement Offer.

**IT IS ORDERED THAT:**

1. The Motion to Strike filed by the Office of the Public Counsel on August 31, 2007 is granted, as is Staff's Motion to Strike Suburban's Improper Unilateral Settlement Offer, which was filed on September 4, 2007.

2. This order shall become effective on September 16, 2007.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Gaw, Clayton  
and Appling, CC., concur.

Lane, Regulatory Law Judge