

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 26<sup>th</sup> day of  
February, 2008.

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 DENYING MOTION TO STRIKE**

Issue Date: February 26, 2008

Effective Date: February 26, 2008

In this complaint, which was filed on July 27, 2007, the Staff of the Missouri Public Service Commission sought Commission orders: (1) directing Staff to investigate the quality of water supplied by respondents 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. The Commission has already issued orders regarding the first three items, leaving only the fourth for the Commission's consideration.

On September 20 and November 13, 2007, Staff filed reports regarding the condition of the water system. On January 4, 2008, Staff also filed an updated report, which incorporated additional information received during the deposition it conducted of Clyde H. Zelch on December 6, 2007. On January 14, 2008, Respondents moved to strike “all references to, quotations from, and exhibits from the deposition of Clyde Zelch” that were included in Staff’s updated report, and asked that the Commission not consider those materials “at this time.” Although no one filed a written pleading opposing the Motion to Strike, the Commission heard oral argument on the motion during a prehearing conference on January 22, 2008 and the case has now been set for an evidentiary hearing, so it is ripe for consideration.

In their Motion to Strike, Respondents argue that the materials in question should be stricken from the record because they had no opportunity to cross-examine Mr. Zelch or otherwise effectively rebut the statements he made during his deposition. They further argue that by referring to Mr. Zelch’s deposition testimony and the associated deposition exhibits in its updated report, Staff engaged in “an improper attempt to get evidence before the Commission through the ‘back door’ in an improper attempt to influence the Commission without the procedural and other safeguards attendant to an evidentiary hearing.”

The Commission finds these complaints to be meritless, as none of the disputed materials, much less Staff’s report as a whole, have been offered or admitted into evidence in this case. Rather, Staff has merely filed a series of pleadings to comply with the Commission’s order of August 6, 2007, which directed Staff to “promptly commence an investigation into the quality of water supplied by Suburban Water and Sewer Company, Inc. and Gordon Burnam and the methods employed by them in supplying and distributing

water for any purpose,” and to “file a report concerning the results of its investigation.” In fact, the Commission fully agrees with Respondents’ position that the “proper and appropriate proceeding in which the deposition excerpts and exhibits should be offered would be the evidentiary hearing in this case, which has yet to occur.” Moreover, the Commission wishes to reassure all of the parties, just as the Regulatory Law Judge assigned to this case did during the prehearing conference, that it has not passed on the credibility or probative value of the disputed evidentiary materials contained in Staff’s updated report<sup>1</sup> – and it will not do so unless and until they are offered and admitted into evidence during the evidentiary hearing itself.

For these reasons, Respondents’ Motion to Strike will be denied.<sup>2</sup>

**IT IS ORDERED THAT:**

1. Respondents’ Motion to Strike, which was filed on January 14, 2008, is denied.
2. This order shall become effective on February 26, 2008.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

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

Lane, Regulatory Law Judge

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<sup>1</sup> See Tr. 6-7 *passim*.

<sup>2</sup> The Motion to Strike also contains substantive responses to the disputed evidentiary materials, which Respondents urge the Commission to consider should the motion be denied. For the reasons given *supra*, those substantive responses will be considered by the Commission if and when the disputed materials are offered and admitted into evidence at the evidentiary hearing.