

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
v.)	Case No. WC-2008-0030
Suburban Water and Sewer Co.,)	
Respondent.)	

**STAFF’S RESPONSE REQUESTING THE COMMISSION DENY
RESPONDENT GORDON BURNAM’S MOTION TO STRIKE**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for *Staff’s Response Requesting the Commission Deny Respondent Gordon Burnam’s Motion to Strike Staff’s Opposition to Respondent’s Motion to Dismiss*¹ (“Staff’s Response”) states as follows:

1. Staff has ten days to respond to a filing, pursuant to 4 CSR 240-2.080(15), not including the day of the filing, unless the last day of the period so computed falls on a Sunday, “in which case the period runs until the end of the next day.” (4 CSR 240-2.050(1)).
2. On Thursday, September 6, 2007 Respondent filed *Respondent Gordon Burnam’s Motion to Strike and Alternative Reply to Staff’s Opposition to Respondent’s Motion to Dismiss* (“Burnam’s Motion to Strike”).
3. On Monday, September 17, 2007 at 4:50 p.m. Staff filed its Opposition to Respondent Gordon Burnam’s Motion to Dismiss.

¹ For clarity and brevity’s sake, Staff’s Response is filed to address Respondent Gordon Burnam’s Motion to Strike. This response is not intended to respond to Respondent’s Alternative Reply to Staff’s Opposition to Respondent’s Motion to Dismiss. Staff respectfully reserves that right to respond.

4. Counting ten days from September 7th results in a filing date on a Sunday, (September 16th). Therefore, Staff's filing was within the prescribed ten day filing period allowed under 4 CSR 240-2.080(15) and 2.050(1).

5. Burnam's Motion to Strike incorrectly asserts that "the deadline for a response to his Motion to Dismiss was 4:00 p.m. on September 16, 2007." The Commission very recently denied the 4:00 p.m. deadline argument² as a "holdover from the time before the Commission was able to accept electronic filings, when paper copies of filings had to be physically received and stamped by the Secretary of the Commission." (*See Order Denying Respondent's Motion for Reconsideration and Application for Rehearing ("Commission's Order")*) at page 2, issued by the Commission on September 13, 2007).

6. The *Commission's Order* specifically referenced 4 CSR 240-2.045 as the "rule, specific to the electronic filing of documents, [that] controls over the more general rule on the filing of documents.... The business hours of the Commission's records room are 8:00 a.m. to 5:00 p.m.... Therefore, when Suburban filed its application for rehearing at 5:52 p.m. it did so after the business hours of the Commissions records room and, by rule, that filing is considered filed on the following day." (at page 3). It is clear that the Commission asserts 5:00 p.m. as the time that must be met for a filing to be considered timely filed by Staff or Respondent. As Respondent admits, Staff's Motion was filed at 4:50:39 p.m. on September 17, 2007 (at page 1) clearly before the 5:00 p.m. deadline that same day.

7. Therefore, the Motion to Strike should be denied.

² Coincidentally, this 4:00 p.m. deadline argument, denied by the Commission, was originally furthered by Staff counsel against Respondent Suburban Water and Sewer Company, represented by the same counsel now attempting to use the rejected argument.

WHEREFORE, Staff respectfully requests the Commission deny Respondent Gordon Burnam's Motion to Strike Staff's Motion.

Respectfully submitted,

/s/ **Shelley Syler Brueggemann**

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 28th day of September 2007.

/s/ **Shelley Syler Brueggemann**